

## Managing a Claims Office

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### Introduction

The claims office is the most visible section in an Army legal office. Nearly all Soldiers and civilian employees ship household goods, hold baggage, or a vehicle when they move to a new duty station. Most of these new arrivals contact the claims office, either to be counseled on the claims process, to report damage to their shipments, or to file a claim. A good experience at the claims office can improve morale; a bad experience can result in discontent and complaints. Because so many people have contact with the claims office, the service they receive can make or break the reputation of the entire legal office. For this reason it is critical for staff judge advocates to properly manage their claims offices.

Fortunately, most claims offices are run well by dedicated and experienced claims professionals. Even when a claims office is running well, however, it is important to monitor claims operations and to provide claims professionals the support they need. Even a well-run claims office can deteriorate through poor management or neglect.

The purpose of this article is to provide an overview of claims office operations and to provide staff judge advocates and other Army law office leaders tips on managing a claims office. Since no two claims offices are alike, the advice in this article should be tailored to suit each office's needs.

### Office Management

#### *Evaluating the Office*

Before deciding how to manage a claims office, staff judge advocates should evaluate the office to determine its strengths and weaknesses. If the office is well run, staff judge advocates can provide general guidance and let the claims professionals manage the details. Offices with problems may require more active supervision.

Staff judge advocates should first speak with the attorney in charge of claims<sup>1</sup> and the senior claims examiner to get their opinion of office strengths and weaknesses. Many claims offices have experienced professionals that have worked in claims for a number of years; these people can provide invaluable insight on office operations. After speaking with the claims office leaders, staff judge advocates should review customer satisfaction surveys and speak with commanders and other community leaders to get an idea of how the public perceives the office. Staff judge advocates can also speak with claims professionals at the U.S. Army Claims Service (USACS), Fort Meade, Maryland—the individuals responsible for the technical supervision of claims offices.<sup>2</sup> The Chief of the Personnel Claims and Recovery Division can tell staff judge advocates how well their office processes personnel claims. The “Area Action Officers” in the Tort Claims Division can provide insight on how effectively an office processes tort and affirmative claims.<sup>3</sup> Overseas staff judge advocates can speak with the head of the appropriate command claims service.<sup>4</sup> In the European Command this person is the Chief of the USACS, in Mannheim, Germany; in the Pacific Command this is the Commander of the USACS, in Seoul, Korea.<sup>5</sup> In addition, staff judge advocates should review the most recent office application for The Judge Advocate General's Excellence in Claims Award.<sup>6</sup> Whether the office won the award or not, the application will provide details on the office's strengths and weaknesses.

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<sup>1</sup> Either a judge advocate or a Department of Army civilian attorney may be delegated the authority to approve payment of claims. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS para. 1-5g(1) (1 July 2003) [hereinafter AR 27-20]; U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 1-6 (8 Aug. 2003) [hereinafter DA PAM. 27-162].

<sup>2</sup> AR 27-20, *supra* note 1, para. 1-9. The USACS provides technical supervision over all claims offices. *Id.* para. 2-4.

<sup>3</sup> *Id.*; DA PAM. 27-162, *supra* note 1, para. 2-4.

<sup>4</sup> Command claims services are responsible for technical oversight of claims within certain geographic areas overseas. *See* AR 27-20, *supra* note 1, para. 2-3; DA PAM. 27-162, *supra* note 1, para. 2-3.

<sup>5</sup> DA PAM. 27-162, *supra* note 1, para. 1-1a(1).

<sup>6</sup> This is an annual award that provides special recognition to claims offices that have performed exceptionally well during a particular fiscal year. *See* DA PAM. 27-162, *supra* note 1, para. 1-17. Applications for the award are submitted electronically to the USACS at Fort Meade, Maryland. The USACS announces the award application process on the Claims Forum of JAGCNet, which authorized users may access through <https://www.jagenet.army.mil> (follow the “Forums” link). These announcements are usually posted in January.

### *Standard Operating Procedure (SOP)*

Each claims office should have an updated SOP.<sup>7</sup> The SOP should contain sufficient detail on office procedures to enable new personnel to quickly learn their jobs. However, the SOP should not be so lengthy that it is never taken off the shelf. A two or three page summary of office procedures with enclosures containing sample claims forms and similar documents should be sufficient.

Staff judge advocates should ensure that the claims SOP has been updated in the last year.<sup>8</sup> Updating the SOP gives claims personnel the opportunity to review their procedures to ensure they still make sense. This update is especially important when the installation receives new missions or Army-wide claims policies or transportation procedures change. Regular reviews of the office SOP also ensure that new claims personnel receive the most up-to-date guidance when they arrive.

### *Office Hours*

Staff judge advocates should ensure that the claims office's hours of operation meet the needs of the local military community. Office hours should give customers convenient access to claims personnel and claims personnel sufficient uninterrupted time to process claims.

Most claims offices find that a combination of appointments and walk-in services is best. This combination allows claimants the option of scheduling an appointment in advance to minimize the amount of time they spend at the claims office or showing up unannounced during walk-in hours. Claims offices should be closed during a portion of the week to permit claims personnel uninterrupted time to adjudicate the more complex claims that they have received. Many claims offices close one morning each week to provide this uninterrupted time. Keeping the office open all day every day will not do any good if claims personnel never have the time to adjudicate the claims they receive.<sup>9</sup>

Claims personnel should always have the flexibility to see claimants with true emergencies immediately, even if they do not come in during normal office hours. Examples of true emergencies include claimants who are nearing the end of the seventy day deadline to turn in their Department of Defense Form 1840R<sup>10</sup> (DD Form 1840R) (the pink form that notifies the carrier of damage during a government-sponsored move) or the two-year statutory deadline to turn in their claim.

### *Claims Offices Co-located With Legal Assistance Offices*

Many claims offices are co-located with the installation legal assistance office. This may save space and reduce office personnel by allowing the claims and legal assistance offices to share a waiting area and a receptionist. Co-location, however, can create ethical problems unless the receptionist is properly trained.

Claims personnel represent the government; they are not permitted to represent individual claimants.<sup>11</sup> Legal assistance attorneys, on the other hand, can enter into an attorney-client relationship with customers who visit their office.<sup>12</sup> Claimants may mistakenly believe that claims examiners or attorneys "represent" them and that their conversations are protected by the attorney-client privilege. Staff judge advocates should ensure that procedures are implemented to avoid this misperception.

When the claims and legal assistance offices share a waiting area and a receptionist, each office should use separate sign-in sheets. The receptionist should ensure that claimants are not confused about the role of claims office personnel. Claims examiners and attorneys who meet with claimants should reinforce this role by explaining that they are not permitted to form attorney-client relationships with claimants.

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<sup>7</sup> See DA PAM. 27-162, *supra* note 1, para. 2-6; R. Kathie Zink & Lieutenant Colonel R. Peter Masterton, Personnel Claims Note: *Managing Personnel Claims*, ARMY LAW., Aug. 1999, at 74.

<sup>8</sup> One of the criteria of The Judge Advocate General's Excellence in Claims Award is having an office Standard Operating Procedure (SOP) that has been updated in the last year. See *supra* note 6.

<sup>9</sup> Zink & Masterton, *supra* note 7, at 77.

<sup>10</sup> U.S. Dep't of Defense, Form 1840R, Notice of Loss or Damage (Jan. 1988).

<sup>11</sup> U.S. DEP'T OF ARMY, REG. 27-26, LEGAL SERVICES, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS R. 1.13 (1 May 1992).

<sup>12</sup> *Id.* R. 1-13(g).

Staff judge advocates should review the claims filing system to ensure it is efficient and user-friendly.<sup>13</sup> Personnel claims, affirmative claims, and tort claims should all be filed separately since the processing of these claims is very different.<sup>14</sup> To the extent possible, claims personnel should return all claims files to the filing cabinets at the end of the day; leaving files sitting on desks can lead to lost claims. The labels on the files should clearly identify the claim number and the claimant's name. The labels on the filing cabinet should clearly identify the type of claims filed and what stage the claims are in (such as "Personnel Claims Pending Adjudication").

Personnel claims should be filed based on the stage of the claim. For example, claims pending adjudication should be filed in one section while claims pending carrier recovery should be filed in another section. Claims pending adjudication should be further separated into small claims (those that can be settled for \$1,000 or less) and large claims.<sup>15</sup> Create another section for claims awaiting documentation. Claims pending carrier recovery should be filed based on where the recovery action will be completed. Claims pending local recovery should be filed in one area while claims that need to be forwarded to higher headquarters for centralized recovery should be filed in another area.<sup>16</sup> Claims personnel should hold claims that were entered into the old version of the personnel claims computer database for thirty days before forwarding them to the USACS for centralized recovery.<sup>17</sup> Claims completed under the new personnel claims computer database should be forwarded for centralized recovery as soon as the appropriate copies and documents are prepared and the file has been organized as required.<sup>18</sup>

Claims personnel should file tort claims based on the type of claim involved or alphabetically. Files that are more than one-half inch thick should be filed in a six-sided file folder. The claim should be separated into the following sections within the folder: (1) chronology, (2) claim form and allied papers, (3) correspondence, (4) research, (5) liability, and (6) damages.<sup>19</sup> If a tort claim is above the claims office's payment authority, claims personnel should periodically forward a mirror file of the claim documents to the USACS or appropriate command claims service overseas and annotate the master file when documents are forwarded.<sup>20</sup> In addition, the significant documents related to the claim should be scanned and uploaded in the Tort and Special Claims computer database.<sup>21</sup>

Claims personnel should file affirmative claims based on the type of claim involved and the current status of the claim. For example, medical care recovery claims should be filed separately from property damage claims, unless they arise from the same incident. Claims that will be compromised or waived in an amount above the office's authority must be forwarded to the USACS or appropriate command claims service.<sup>22</sup> All affirmative claims should be entered into the affirmative claims computer database.<sup>23</sup>

Staff judge advocates should ensure that claims-related information is not released to unauthorized personnel.<sup>24</sup> Requests for claims-related information under the Freedom of Information Act<sup>25</sup> and the Privacy Act<sup>26</sup> should be carefully

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<sup>13</sup> Zink & Masterton, *supra* note 7, at 77.

<sup>14</sup> Compare DA PAM. 27-162, *supra* note 1, chs. 3-9, 10, 12 (tort claim procedures), *with id.* ch. 11 (personnel claim procedures) and *id.* ch. 14 (affirmative claim procedures).

<sup>15</sup> AR 27-20, *supra* note 1, para. 11-10b.

<sup>16</sup> Zink & Masterton, *supra* note 7, at 77.

<sup>17</sup> See AR 27-20, *supra* note 1, para. 11-32 (requiring recovery files to be held for thirty days prior to forwarding for centralized recovery). The rationale for this rule is that the old version of the personnel claims computer database does not permit claims to be accepted by the USACS immediately because uploads are sent on a monthly basis from the field.

<sup>18</sup> The rationale for holding files 30 days no longer exists under the new personnel claims computer database. See *infra* notes 31-33 and accompanying text for a description of the new personnel claims computer database.

<sup>19</sup> DA PAM. 27-162, *supra* note 1, para. 2-14.

<sup>20</sup> *Id.* para. 2-15.

<sup>21</sup> Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, <https://www.jagcnet.army.mil>. See *infra* notes 34-37 and accompanying text.

<sup>22</sup> Generally, the head of an area claims office (ACO) may settle a claim for the full amount asserted regardless of the amount. The head of an ACO may compromise, terminate, or waive affirmative claims asserted for \$50,000 or less. AR 27-20, *supra* note 1, para. 14-4c; DA PAM. 27-162, *supra* note 1, para. 14-4.

<sup>23</sup> Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, available at <https://www.jagcnet.army.mil>. See *infra* notes 38-40 and accompanying text.

<sup>24</sup> AR 27-20, *supra* note 1, para. 1-19b(1).

scrutinized and promptly answered.<sup>27</sup> Requests from claimants for information in personnel claims files are usually granted. Requests from claimants for information in tort claims files are granted less frequently; attorney work product in such files is often not released.<sup>28</sup> Requests from third parties are also less likely to be granted, as a claimant's right to privacy often outweighs the need to release information.<sup>29</sup> Requests for claims information that is not releasable should be forwarded to the Commander of the USACS, who is the initial denial authority for such requests.<sup>30</sup> If claims files contain documents produced by other agencies (such as police reports), requests for these documents should be forwarded to the agency involved.

### *Automation*

The USACS has fielded a number of computer programs to help process claims and track claims expenditures. Staff judge advocates should ensure that their claims offices are properly using these programs.

### *Personnel Claims Computer Database*

In 2005, a new computer claims program is scheduled to be fielded that will enable Soldiers and Army civilian employees to file personnel claims through the Internet.<sup>31</sup> The new program should revolutionize the way claims are processed, making the process much simpler for claimants. Claimants, however, will still have the option of filing their claims in person or by mail.

The program will be accessible from any computer with internet access. No special equipment or training will be required; the program contains instructions that guide claimants through the process of filing a claim. Soldiers and civilian employees will still be required to complete and turn in DD Form 1840R (the pink form that notifies the carrier of loss and damage to the shipment that was not noticed at delivery) within seventy days of the arrival of their household goods and hold baggage shipments. The new program, however, will allow Soldiers and civilian employees to complete and turn in the form through the internet. No special scanning equipment will be required; the program provides instructions for entering the requested information directly into a computer-generated copy of the form. Soldiers and civilian employees will still have the option of delivering a hard copy of this form to their nearest claims office. All of the current claims rules will continue to apply. Soldiers and civilian employees will still have two years after discovery of property loss or damage to file a claim.<sup>32</sup>

The new database will replace the former Personnel Claims Management Program that was used to track the number of claims paid by each field claims office and the amounts paid. Tracking the numbers of claims and amounts paid is important because all personnel claims are paid from a central fund managed by the USACS.<sup>33</sup>

### *Tort and Special Claims Database*

Tort claims are tracked through the Tort and Special Claims Database.<sup>34</sup> This database enables supervisory claims offices and the USACS to monitor the investigation, negotiation, and payment of tort claims.

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<sup>25</sup> 5 U.S.C. § 552 (2000); *see also* U.S. DEP'T OF ARMY, REG. 25-55, INFORMATION MANAGEMENT: RECORDS MANAGEMENT, THE DEP'T OF THE ARMY FREEDOM OF INFORMATION ACT PROGRAM (Nov. 1, 1997) [hereinafter AR 25-55].

<sup>26</sup> 5 U.S.C. § 552a; *see also* U.S. DEP'T OF ARMY, REG. 340-21, OFFICE MANAGEMENT, THE ARMY PRIVACY PROGRAM (5 July 1985).

<sup>27</sup> Requests for information under the Freedom of Information Act must be answered within ten working days. AR 25-55, *supra* note 25, para. 1-503.

<sup>28</sup> Requests from a claimant should be considered under both the Freedom of Information Act and the Privacy Act. AR 27-20, *supra* note 1, para. 1-19b(2)(a). *See* Personnel Claims Note, *Personnel Claims Files Releasable Under the Privacy Act*, ARMY LAW., Jan. 1998, at 135.

<sup>29</sup> AR 27-20, *supra* note 1, para. 1-19b(3)(c).

<sup>30</sup> *Id.* para. 1-19b(5).

<sup>31</sup> *See* Posting of Chief Warrant Officer Three Larry Sexton to JAGCNet Claims Forum, subject: New PCMS (Last Minute Information), <http://www.jagcnet.army.mil/FORUMS> (Aug. 12 2005).

<sup>32</sup> *See* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New PCMS—Training Schedule, <https://www.jagcnet.army.mil/FORUMS> (Feb. 15, 2005). AR 27-20, *supra* note 1, para. 11-7.

<sup>33</sup> *See* DA PAM. 27-162, *supra* note 1, para. 13-11.

<sup>34</sup> Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, <https://www.jagcnet.army.mil>.

The database permits the upload of claims forms, police reports, and similar documents, making it simpler to share these documents between the local claims office, supervisory offices, and the USACS. The Standard Form 95,<sup>35</sup> documentary evidence supporting a claim, letters to claimants, and other important documents must be uploaded to the database as they are submitted.<sup>36</sup> Uploading these documents, however, does not relieve field claims offices of the requirement to create mirror files.

Currently, medical records may not be uploaded to the database because the requirements of the Health Insurance Portability and Accountability Act are not satisfied.<sup>37</sup>

### *Affirmative Claims Database*

The Affirmative Claims Management Program tracks affirmative claims.<sup>38</sup> All affirmative claims, including potential claims, should be logged into this computer database.<sup>39</sup> This database enables claims personnel and supervisory claims offices to monitor the collection of claims.<sup>40</sup> This database also can warn claims personnel of the claims that are approaching the statute of limitations and claims that will need to be referred for litigation.

### *Claims Forum*

Claims personnel should check the Claims Forum on JAGCNet every day.<sup>41</sup> The Claims Forum contains e-mails from claims professionals around the world and is monitored by the USACS. The Claims Forum enables claims professionals to ask questions and obtain up-to-date guidance on critical claims issues.<sup>42</sup>

### *Publicity*

Staff judge advocates should ensure their claims personnel provide claims information to the local military community.<sup>43</sup> Most offices do this by publishing articles in the local military newspaper. Many offices also have a website that contains claims information.<sup>44</sup> Other offices distribute claims information to the community through flyers, newsletters, or by e-mail. These articles, flyers, and information papers should contain basic information such as claims office hours and locations. They also should contain information on the rules for the most common claims, such as shipment claims, property loss at quarters, vehicle damage, and tort claims.<sup>45</sup>

Before the summer moving season begins, a claims office should publish an article providing advice on shipment claims. The article should include advice on photographing or videotaping property to document its pre-move condition, tips on handling jewelry and other high-value items that are easily stolen, and advice on reviewing the property inventory. After the summer moving season, a claims office should publish a follow-on article providing advice on turning in the DD Form

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<sup>35</sup> U.S. Dep't of Justice, Standard Form 95, Claim for Damage, Injury, or Death (nd).

<sup>36</sup> Posting of George R. Westerbeke to JAGCNet Claims Forum, subject: Scanning Key Tort Claim Documents: Now Required, <http://www.jagcnet.army.mil/FORUMS> (Feb. 17, 2004); Posting of George R. Westerbeke to JAGCNet Claims Forum, subject: Uploading Scanned Documents to the Torts Database, <https://www.jagcnet.army.mil/FORUMS> (May 24, 2004).

<sup>37</sup> 42 U.S.C. § 201 (2000); *see also* 45 C.F.R. pts. 160 and 164 (2004).

<sup>38</sup> Authorized users can access this database through the JAGC Applications (Software) link on JAGCNet, *available at* <https://www.jagcnet.army.mil>.

<sup>39</sup> DA PAM. 27-162, *supra* note 1, para. 14-19c.

<sup>40</sup> This is especially important when claims personnel want to compromise, waive, or terminate an affirmative claim above their settlement authority. AR 27-20, *supra* note 1, para. 14-4.

<sup>41</sup> Authorized users can access the Claims Forum at <https://www.jagcnet.army.mil/FORUMS>.

<sup>42</sup> One of the criteria for the Judge Advocate General's Excellence in Claims Award is logging onto the Claims Forum on a daily basis. *See supra* note 6.

<sup>43</sup> Zink & Masterton, *supra* note 7, at 77; DA PAM. 27-162, *supra* note 1, para. 11-21d.

<sup>44</sup> *See, e.g.*, Office of the Staff Judge Advocate, Headquarters, XVIII Airborne Corps and Fort Bragg, Claims, <http://www.bragg.army.mil/SJA/Claims.htm> (last visited Aug. 29, 2005); Office of the Staff Judge Advocate, Fort Carson, Claims Division, <http://www.carson.army.mil/LEGAL/FortCarsonClaims.htm> (last visited Aug. 29, 2005).

<sup>45</sup> One of the criteria of the Judge Advocate General's Excellence in Claims Award is publishing claims information to the local community. *See supra* note 6.

1840R (the pink form that provides notice to the carrier of loss or damage after delivery) and tips on filing a claim. In areas where monsoons or hurricanes are prevalent, claims offices should publish articles advising the community how to protect property from these hazards (such as keeping refrigerators shut when the power goes out) and the rules for documenting and filing a claim if these efforts fail (such as photographing spoiled food before disposing of it). In areas subject to blizzards and ice storms, offices should publish similar articles on these hazards.

### *Briefings*

Claims personnel should regularly brief incoming and outgoing personnel on claims issues.<sup>46</sup> These briefings should provide not only basic information on how to file a claim, but should also include tips on protecting property and documenting ownership to make it easier to file a claim if the property is lost or damaged.<sup>47</sup>

Claims professionals should participate in in-processing briefings to ensure incoming personnel receive claims office phone numbers and are familiar with the requirements for reporting loss or damage to personal property shipments. In particular, incoming personnel should be advised of the importance of turning in the DD Form 1840R (the pink form that notifies the carrier of damage during a government-sponsored move) within seventy days of delivery of household goods or hold baggage.<sup>48</sup> If an installation is subject to flooding in the summer or ice storms in the winter, the briefings should include information on how to protect property from these hazards and how to document loss or damage.

Claims professionals should participate in out-processing briefings as well. Briefings for outgoing personnel should include tips on documenting ownership and condition of personal property prior to shipment by photographing or videotaping it. The briefings should also include tips on what not to ship as household baggage or hold baggage. For example, personnel should be advised to hand-carry or mail receipts and other evidence of ownership and to hand-carry jewelry, cash and other items that are easily stolen.<sup>49</sup>

Claims professionals should also contact the local transportation office to ensure that they are providing adequate claims information to incoming and departing personnel. The transportation office should be provided with updated claims flyers that include the telephone number of the claims office.

### *Fiscal Integrity*

It is essential for staff judge advocates to check on the fiscal controls used in the claims office.<sup>50</sup> The claims office routinely deals with large amounts of money. Checks routinely come into the claims office and vouchers authorizing payment of claims are routinely sent out of the office. Staff judge advocates should monitor how checks are accounted for and secured and how vouchers are prepared and tracked.

Most claims offices receive checks from two sources: carrier recoveries and affirmative claims. When a claims office pays a personnel claim for shipment loss or damage, the office will initiate a recovery action against the carrier responsible for the loss or damage.<sup>51</sup> While the USACS handles some recovery actions centrally, most large claims offices handle recoveries under \$1,000 and recoveries involving local moves.<sup>52</sup> When government personnel are injured through another's negligence, the claims office will assert an affirmative claim against the negligent party for the cost of government provided medical care to the injured person and for lost wages.<sup>53</sup> When government property is damaged through negligence, the

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<sup>46</sup> Zink & Masterton, *supra* note 7, at 78.

<sup>47</sup> One of the criteria of the Judge Advocate General's Excellence in Claims Award is providing briefings to incoming and outgoing personnel. *See supra* note 6.

<sup>48</sup> DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

<sup>49</sup> *See* DA PAM. 27-162, *supra* note 1, para. 11-15 (explaining that claimants should be briefed that "jewelry and other small expensive items should be hand-carried").

<sup>50</sup> *See id.* para. 11-21i; Zink & Masterton, *supra* note 7, at 79.

<sup>51</sup> AR 27-20, *supra* note 1, para. 11-23.

<sup>52</sup> *See* DA PAM. 27-162, *supra* note 1, para. 11-32a; Posting of Joseph Goetzke, to JAGCNet Claims Forum, subject: New Delegation of Recovery Claim Authority, <https://www.jagcnet.army.mil/FORUMS> (June 22, 2001).

<sup>53</sup> AR 27-20, *supra* note 1, para. 14-10.

claims office will also assert an affirmative claim against the person responsible or his or her insurance company.<sup>54</sup> In each of these cases, the claims office may receive checks to settle these actions.<sup>55</sup> Checks from carrier recoveries and affirmative claims should be promptly locked in a safe or other locked container; they should not be left unsecured in the claims files.<sup>56</sup> Checks should be deposited or returned within thirty days. The claims office SOP should describe the manner of securing and depositing checks and staff judge advocates should track compliance with these procedures.

All claims offices prepare vouchers for the payment of claims within their settlement authority. These payments must be properly tracked on the appropriate computer database to ensure that there are sufficient funds to make payment. The USACS centrally manages the accounts used to pay personnel claims and most tort claims.<sup>57</sup> Staff judge advocates should ensure that their claims offices keep track of their claims expenditures to make certain that there are sufficient funds to pay claims.

Because of the importance of fiscal integrity, staff judge advocates should periodically conduct audits to ensure the claims office is handling checks and funds properly. Periodically inspect claims files and the office safe to ensure that checks are properly safeguarded. Review claims reports and periodically ask for the status of the office Claims Expenditure Allowance<sup>58</sup> to ensure that the office is properly tracking claims and updating the USACS on the expenditure of funds.

### *Surveying Performance*

Staff judge advocates should ensure that their claims office obtains feedback from customers.<sup>59</sup> The Personnel Claims Act is designed to improve the morale of Soldiers and civilian employees.<sup>60</sup> If most people who file personnel claims are dissatisfied with their experience at the claims office, this statutory intent is not fulfilled. While a claims office cannot satisfy every claimant, the office should make every effort to provide good service. Being courteous, properly explaining the claims process, and paying claims promptly will go a long way to satisfy most customers.

Claims offices should routinely provide claimants with customer satisfaction surveys and a simple way to return them—either in a drop-box located in the claims office or through the mail. The claims office can also participate in the automated Interactive Customer Evaluation program, a computer-based customer satisfaction survey that covers all Army installations.<sup>61</sup> In addition, the claims judge advocate should periodically call claimants to determine if they were satisfied with their visit to the claims office. These telephone calls may reveal issues that other types of surveys would never uncover.

### *Training*

All claims professionals should attend training to enhance their knowledge of the claims regulations and improve their proficiency in processing different types of claims and recovery actions. The USACS offers a number of superb courses specifically designed for Army claims professionals. These courses are announced on the Claims Forum of JAGCNet.<sup>62</sup>

For claims professionals overseas, regional command claims services periodically host local claims conferences. The USACS, Europe, offers a weeklong claims conference every year (usually held in the late fall) and a three-day workshop for

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<sup>54</sup> *Id.* para. 14-7.

<sup>55</sup> DA PAM. 27-162, *supra* note 1, para. 14-19b.

<sup>56</sup> AR 27-20, *supra* note 1, para. 11-24b(3).

<sup>57</sup> DA PAM. 27-162, *supra* note 1, para. 13-11.

<sup>58</sup> The Claims Expenditure Allowance is a financial target that the USACS issues to each field claims office on a monthly basis. AR 27-20, *supra* note 1, para. 13-12.

<sup>59</sup> Zink & Masterton, *supra* note 7, at 79.

<sup>60</sup> *See infra* note 72.

<sup>61</sup> *See* Interactive Customer Evaluation, <http://ice.disa.mil/index.cfm>.

<sup>62</sup> DA PAM. 27-162, *supra* note 1, para. 1-15a(2). Authorized users can access the Claims Forum of JAGCNet through <https://www.jagcnet.army.mil> (follow the “Forums” link). Information on such courses is also available at the USACS Internet site, <http://www.jagcnet.army.mil/JAGCNETINRANET/JAGCDATABASES/CLAIMS/USARCS.NSF>.

new claims professionals twice a year.<sup>63</sup> The U.S. Armed Forces Claims Service, Korea, offers a weeklong conference for experienced claims professionals every year (usually held in the early fall).<sup>64</sup>

### *Office Facilities and Resources*

Staff judge advocates should ensure that their claims offices have adequate facilities and resources to accomplish the mission.<sup>65</sup> The office should be easily accessible to the Soldiers and civilian employees it supports and have a professional appearance and adequate space. In addition, office personnel will need the necessary hardware and software—computers, color printers, digital scanners, and digital cameras—to run the claims software and to investigate claims.

### *The Judge Advocate General's Excellence in Claims Award*

Every claims office should apply for the Judge Advocate General's Excellence in Claims Award.<sup>66</sup> Even if the office does not win the award, the application process will give claims professionals and staff judge advocates an excellent picture of the strengths and weaknesses of the office.

The award application process and the criteria for grading award applications are announced annually on the Claims Forum of JAGCNet.<sup>67</sup> The criteria ensure that claims offices are providing good service to claimants, properly investigating claims, promptly adjudicating and paying claims, properly using claims computer programs, providing claims information to the local community, and preparing for disaster claims operations.

The award measures an office's performance from October through September of the prior fiscal year. The application is usually due on February of the following year and must be entered electronically using the application available on JAGCNet.<sup>68</sup> The award is very competitive; only a small percentage of the offices that apply will receive the award.<sup>69</sup>

## **Personnel Claims**

The majority of claims processed by an Army legal office are personnel claims.<sup>70</sup> Personnel claims are paid under the Personnel Claims Act, which permits military personnel and civilian employees compensation for loss or damage to their property sustained incident to service.<sup>71</sup> The Act is designed to improve morale of Soldiers and civilian employees.<sup>72</sup> Staff judge advocates should ensure that their claims office is satisfying this statutory intent by adjudicating and paying personnel claims promptly and informing claimants of the rationale for payments.

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<sup>63</sup> See United States Army Claims Service Europe, <https://claimseurope.hqusareur.army.mil> (providing information on all courses offered by the USACS, Europe).

<sup>64</sup> See United States Armed Forces Claims Service, Korea, <http://8tharmy.korea.army.mil/ClaimsSvc> (providing information on all courses offered by the USACS, Korea).

<sup>65</sup> Zink & Masterton, *supra* note 7, at 80.

<sup>66</sup> See DA PAM. 27-162, *supra* note 1, para. 1-17.

<sup>67</sup> The application process for the fiscal year 2004 award was announced on the Claims Forum on 11 January 2005. Posting of Chief Warrant Office Three Larry W. Sexton to JAGCNet Claims Forum, subject: The Judge Advocate General's Excellence in Claims Award for FY 04, <https://www.jagcnet.army.mil/FORUMS> (Jan 11, 2005). The criteria for grading award applications were announced on 1 February 2005. See Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Excellence in Claims Awards—PC&R Scoring, <https://www.jagcnet.army.mil/FORUMS> (Feb. 1, 2005); see also Claims Management Note, *The Judge Advocate General's Excellence in Claims Award*, ARMY LAW., Nov. 1998, at 68.

<sup>68</sup> The link to get to the electronic award application is contained in the award announcement posted on the Claims Forum of JAGCNet.

<sup>69</sup> See Lieutenant Colonel R. Peter Masterton, *Winners of the 1998 Excellence in Claims Award*, ARMY LAW., Sept. 1999, at 40.

<sup>70</sup> Zink & Masterton, *supra* note 7, at 74.

<sup>71</sup> 31 U.S.C. § 3721 (2000).

<sup>72</sup> Zink & Masterton, *supra* note 7, at 80.

Some personnel claims must be reviewed personally by the staff judge advocate.<sup>73</sup> When reviewing these claims the staff judge advocate should ensure that the office properly analyzed and paid the claim. This review provides an excellent opportunity to ask claims personnel questions about the claim and examine their adjudication procedures.

### *Payable Claims*

The Personnel Claims Act limits payment of claims to \$40,000. The limit, however, is raised to \$100,000 for claims arising from an emergency evacuation or from “extraordinary circumstances.”<sup>74</sup> The statute requires substantiation of the claim, and a determination that the employee’s possession of the property was “reasonable and useful under the circumstances,” and that the loss was not caused by a negligent or wrongful act by the claimant.<sup>75</sup> The claim must also be presented in writing within two years after it accrues.<sup>76</sup>

The term “incident to service” is defined in *Army Regulation 27-20* and *Department of Army Pamphlet 27-162*.<sup>77</sup> Chapter 11 of both of these publications defines several types of property losses that are considered “incident to service” and, therefore, payable under the Personnel Claims Act.<sup>78</sup> The most common type of property loss incident to service is a loss occurring during a government-sponsored shipment.<sup>79</sup> Another common type of personnel claim involves loss of property stored at government quarters or other authorized places resulting from “fire, flood, hurricane, or other unusual occurrence,” or “theft or vandalism.”<sup>80</sup>

Vehicle losses at government quarters or on a military installation are also considered “incident to service” if the claimant can prove that the loss actually occurred at government quarters or on the installation.<sup>81</sup> Vehicle losses off the installation are only payable if claimants can prove that the loss is clearly related to their military service.<sup>82</sup> The Army may also pay claims for vehicle losses if the Soldier or civilian employee used the vehicle for military duty.<sup>83</sup> Special rules apply to losses to rental cars used for official duty. Although these losses are not payable under the Personnel Claims Act,<sup>84</sup> the rental car company may be responsible for covering the loss if the vehicle was rented under the government central contract.<sup>85</sup> Special exclusions apply in each of these situations, so it is important to carefully read both the claims regulation and pamphlet before concluding that a claim is payable.

### *Shipment Losses and the DD Form 1840R*

Staff judge advocates should verify that incoming personnel are informed of the importance of the DD Form 1840R. Claimants are required to submit this document to the claims office within seventy days of receipt of a household goods or hold baggage shipment.<sup>86</sup> If they fail to do so, they may not be able to recover for their loss or damage.<sup>87</sup>

<sup>73</sup> Denials of personnel claims, waivers of maximum allowances, and requests for reconsideration must all be acted on personally by the head of an Area Claims Office. See AR 27-20, *supra* note 1, para. 11-2f. The head of an ACO is the senior judge advocate in the office. *Id.* para. 1-5e.

<sup>74</sup> 31 U.S.C. § 3721(b)(1); see also Personnel Claims Note, *Increase in Amount Payable Under the Personnel Claims Act*, ARMY LAW., Oct. 1996, at 47.

<sup>75</sup> 31 U.S.C. § 3721(f).

<sup>76</sup> *Id.* § 3721(g).

<sup>77</sup> AR 27-20, *supra* note 1, para. 11-5; DA PAM. 27-162, *supra* note 1, para. 11-5.

<sup>78</sup> *Id.*

<sup>79</sup> See generally AR 27-20, *supra* note 1, para. 11-5e.

<sup>80</sup> *Id.* para. 11-5d.

<sup>81</sup> *Id.* para. 11-5h(3); see Personnel Claims Note, *Policy Changes to be Published in New Regulation*, ARMY LAW., Feb. 1998, at 54.

<sup>82</sup> For example, evidence that a Soldier’s vehicle is vandalized by being spray painted with the phrase “soldiers kill babies,” may be sufficient to demonstrate that the vandalism was caused because of the Soldier’s association with the military. See AR 27-20, *supra* note 1, para. 11-6h(5); DA PAM. 27-162, *supra* note 1, para. 11-5h(4); see also Claims Report, *Vehicle Theft and Vandalism Off-Post*, ARMY LAW., Feb. 1999, at 49.

<sup>83</sup> AR 27-20, *supra* note 1, para. 11-5h(1); Claims Report, *Use of Privately Owned Vehicles (POVs) for the “Convenience of the Government,”* ARMY LAW., Feb 1999, at 49.

<sup>84</sup> 31 U.S.C. § 3721 (2000).

<sup>85</sup> The centralized contract is managed by the Surface Deployment and Distribution Command. Additionally, vehicles rented using a government VISA card are covered by insurance. See generally Foreign Tort Claims Note, *Damage to Rental Cars*, ARMY LAW., Dec. 2002, at 30; Foreign Tort Claims Note, *Government Owned Vehicles Collide With Rental Cars—Who Pays for the Damage?*, ARMY LAW., Sept. 2004, at 53.

<sup>86</sup> DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

When household goods or hold baggage shipments are delivered, the carrier must provide a DD Form 1840<sup>88</sup> (usually pink in color) to the person receiving the shipment. The reverse side of this form is the DD Form 1840R, which is used to list damage or loss discovered after delivery.<sup>89</sup> The DD Form 1840R contains bold letters stating that it must be turned in to the claims office within seventy days of delivery.<sup>90</sup> The claims office has another five days to dispatch the form to the carrier.<sup>91</sup> When the claims office pays a claim for loss or damage during shipment, it attempts to recover the amount paid to the claimant from the carrier responsible for the loss.<sup>92</sup> If the form is not dispatched to the carrier within seventy-five days, the carrier is not liable for the loss.<sup>93</sup>

If the claimant fails to list lost or damaged items on the DD Form 1840R, or fails submit the form within the required time period, the claims office ordinarily will not pay for the lost or damaged items involved due to inadequate proof that the items were actually lost or damaged in shipment.<sup>94</sup> There are limited exceptions authorizing the claimant to submit the form late, such as hospitalization or temporary duty for a significant period of the notice period.<sup>95</sup>

### Claims Instructions

Staff judge advocates should ensure that the written instructions provided to claimants are clear and user-friendly.<sup>96</sup> For shipment-related claims, instructions are typically given to claimants upon submission of the DD Form 1840R. For other claims, written instructions are provided by claims personnel when the claimant initially contacts the claims office. If the claims office has an internet website, claims personnel should ensure instructions are posted on the site.

The instructions should contain all of the necessary forms to file a personnel claim. These forms include the DD Form 1842,<sup>97</sup> which is the signed assertion of a personnel claim, and the DD Form 1844,<sup>98</sup> which contains a list of all of the property lost or damaged.<sup>99</sup>

For shipment related claims, the instructions should tell claimants to submit all of the shipment documents in their possession, such as the DD Form 1840R, which is the notice of loss or damage made to the carrier, and the property inventory and the Government Bill of Lading.<sup>100</sup> The instructions should also tell the claimant what substantiation is required. Generally, the claimant will need to establish ownership, loss or damage, and the value of the property claimed.<sup>101</sup> For shipment claims, ownership is generally established by the inventory<sup>102</sup> and loss or damage is established by the DD Form 1840 and DD Form 1840R.<sup>103</sup> The claimant can establish the value of the loss using estimates of repair or replacement costs.<sup>104</sup> The instructions should include a list of local repair firms and resources for finding replacement costs.<sup>105</sup> The

<sup>87</sup> AR 27-20, *supra* note 1, para. 11-21a(3).

<sup>88</sup> U.S. Dep't of Defense, Form 1840, Joint Statement of Loss or Damage at Delivery (Jan. 1988), reproduced in DA PAM. 27-162, *supra* note 1, fig. 11-8A.

<sup>89</sup> See U.S. Dep't of Defense, Form 1840R, Notice of Loss or Damage (Jan. 1988), reproduced in DA PAM. 27-162, *supra* note 1, fig. 11-8B.

<sup>90</sup> See *id.*

<sup>91</sup> DA PAM. 27-162, *supra* note 1, paras. 11-14i, 11-21(g)(2).

<sup>92</sup> AR 27-20, *supra* note 1, para. 11-24.

<sup>93</sup> DA PAM. 27-162, *supra* note 1, para. 11-21(g).

<sup>94</sup> *Id.*, para. 11-14i.

<sup>95</sup> *Id.*; see also Personnel Claims Note, *Checking for the DD Form 1840R*, ARMY LAW., Nov. 1997, at 57 (stating that when a claimant fails to turn in the DD Form 1840R within seventy days, but turns in a claim within the deadline, it may be appropriate to waive the deduction for potential carrier recovery); Personnel Claims Note, *Dispatch of DD Form 1840R After the Seventy-Five Day Limit*, ARMY LAW., Sept. 1998, at 57.

<sup>96</sup> Zink & Masterton, *supra* note 7, at 75.

<sup>97</sup> U.S. Dep't of Defense, DD Form 1842, Claim for Loss of or Damage to Personal Property Incident to Service (May 2000).

<sup>98</sup> U.S. Dep't of Defense, DD Form 1844, List of Property and Claims Analysis Chart (May 2000).

<sup>99</sup> AR 27-20, *supra* note 1, para. 11-8.

<sup>100</sup> See DA PAM. 27-162, *supra* note 1, para. 11-24a. Shipment documents may also be obtained from the transportation office. *Id.*

<sup>101</sup> See AR 27-20, *supra* note 1, para. 11-11; DA PAM. 27-162, *supra* note 1, para. 11-14b, h.

<sup>102</sup> DA PAM. 27-162, *supra* note 1, para. 11-14h(1)(a).

<sup>103</sup> *Id.* para. 11-21g. Some items, such as compact discs, pose special problems because they are expensive and easily pilferable. It is best for claimants to take pictures of such items before the move as further proof that they were actually shipped. See Personnel Claims Note, *Empty Compact Disc Cases*, ARMY LAW., Sept. 1998, at 58.

instructions should also ensure that the claimant provides evidence needed for the claims office to recover against the carrier who caused the loss. For example, for damaged electronic items the claims office will need a personalized statement from the claimant describing why he or she believes the item was damaged in shipment and a specialized estimate of repair describing why the repairman believes the damage was shipment related.<sup>106</sup>

### *Filing a Claim*

Staff judge advocates should ensure that claims are properly date stamped and logged upon receipt. Any written demand for compensation constitutes a claim, even if no specific sum is mentioned.<sup>107</sup> Only a Soldier or civilian employee, or his or her authorized agent or survivor, may present a claim.<sup>108</sup> The claim must be received at a U.S. military installation within two years after it accrues.<sup>109</sup> A claim accrues on the date of the incident causing the loss or damage or when the claimant knew or should have known of the loss or damage.<sup>110</sup> For personal property shipments, a claim accrues on the date of delivery, *not* the date the Soldier or civilian employee submits the DD Form 1840R.<sup>111</sup>

### *Adjudication*

Adjudication is the most important part of the claims process. If the adjudication is fair and speedy, the claimant will usually be satisfied; adjudications that are slow, poorly explained, or inconsistent with other adjudications will often lead to complaints.

Small claims (those which can be paid for \$1,000 or less) should be processed separately. Because small claims usually do not require extensive investigation, they should be processed as quickly as possible. The claims adjudicator may relax the evidentiary requirements slightly and use agreed cost of repairs and loss of value as the measure of damage, rather than requiring the claimant to obtain estimates of repair.<sup>112</sup> If possible, these claims should be adjudicated on the spot while the claimant is still in the office.<sup>113</sup>

Claims personnel should inspect damaged items, if possible.<sup>114</sup> Repair estimates are necessary for repairable items.<sup>115</sup> If an item can not be repaired, the claimant should be awarded the replacement cost, minus depreciation<sup>116</sup> and salvage value (if any).<sup>117</sup> Some items may require extensive investigation to determine appropriate replacement costs. Claims personnel can

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<sup>104</sup> DA PAM. 27-162, *supra* note 1, para. 11-14e, f.

<sup>105</sup> *See id.* para. 11-14f.

<sup>106</sup> *Id.* para. 11-14d(3); *see* Personnel Claims Note, *Carrier Industry Requests*, ARMY LAW., Aug. 1998, at 56; Personnel Claims Note, *The Importance of Repair Estimates for Electronic Items*, ARMY LAW., Aug. 1996, at 36.

<sup>107</sup> AR 27-20, *supra* note 1, para. 11-8(a).

<sup>108</sup> *Id.* para. 11-4; *see* Personnel Claims Note, *A Comparison of the Authority to Ship Household Goods Versus Filing a Claim*, ARMY LAW., June 1996, at 77.

<sup>109</sup> AR 27-20, *supra* note 1, para. 11-7a. This is a statutory requirement and may not be waived, even if the claimant relies on bad advice from claims personnel. The only exceptions are for claims accruing during time of war or armed conflict when good cause is shown or when the claimant is a prisoner of war. *Id.* para. 11-7b. Receipt is measured by the date a claim is received at a military establishment, not the date it is postmarked. *Id.* para 11-7a; DA PAM. 27-162, *supra* note 1, para. 11-7a(1).

<sup>110</sup> AR 27-20, *supra* note 1, para. 11-7a.

<sup>111</sup> *Id.* para. 11-7; DA PAM. 27-162, *supra* note 1, para. 11-7b(2).

<sup>112</sup> DA PAM. 27-162, *supra* note 1, para. 11-10b.

<sup>113</sup> Zink & Masterton, *supra* note 7, at 76.

<sup>114</sup> *See* Personnel Claims Note, *Claims Office Inspections*, ARMY LAW., July 1998, at 89.

<sup>115</sup> DA PAM. 27-162, *supra* note 1, para. 11-14d; Mr. Lickliter, Personnel Claims Note, *Compensation for Repairable Porcelain Figurines*, ARMY LAW., June 1999, at 51.

<sup>116</sup> AR 27-20, *supra* note 1, para. 11-14d.

<sup>117</sup> *Id.* para. 11-14e.

check on the Internet or seek help through the Claims Forum to obtain replacement costs for obscure items.<sup>118</sup> Claims personnel should document their research on the chronology sheet on the left side of the claims file.<sup>119</sup>

The Allowance List Depreciation Guide, which is reproduced in the Army claims pamphlet, sets “maximum allowances” on the amount that can be paid for certain types of property.<sup>120</sup> The staff judge advocate can waive the maximum allowance based on good cause.<sup>121</sup> The staff judge advocate may only waive the maximum if the claimant provides clear and convincing evidence that he owned the property, that the property was lost or damaged as alleged, that the property had the value claimed, and that the property was not held for use in a business.<sup>122</sup>

When a loss is covered by private insurance, the claimant is generally required to file with his insurance company before the claim can be paid.<sup>123</sup> An exception to this requirement can be made for good cause.<sup>124</sup> The USACS has waived this requirement for all claims involving loss or damage during shipment or storage of personal property.<sup>125</sup>

Claims that appear to involve fraud should be adjudicated with special care. As a general rule, claims personnel should presume claimants are honest.<sup>126</sup> If a claimant has clearly engaged in fraud, claims personnel can deny either the line item tainted by fraud or the entire claim.<sup>127</sup>

Properly explaining the adjudication will help ensure the claimant’s satisfaction with the final payment. If possible, explain the adjudication while the claimant is still in the office.<sup>128</sup> If this is not possible, send the claimant an explanation describing why the claimant was not paid the full amount claimed.<sup>129</sup> The Army claims pamphlet contains sample explanations.<sup>130</sup>

### *Requests for Reconsideration*

Requests for reconsideration provide staff judge advocates the opportunity to review personnel claims on a regular basis. The staff judge advocate must personally act on these requests.<sup>131</sup> When reviewing these requests, staff judge advocates should determine whether their claims personnel properly applied the relevant claims rules and how well they explained these rules to the claimant.

Claimants who are not satisfied with the amount they are paid have the right to request reconsideration within sixty days.<sup>132</sup> Claims attorneys can always reconsider claims they settle if the original adjudication was incorrect.<sup>133</sup> Claims

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<sup>118</sup> Authorized users can access the Claims Forum at <https://www.jagcnet.army.mil/FORUMS>. See Personnel Claims Note, *Claims for Russian Boxes*, ARMY LAW., Sept. 1996, at 61.

<sup>119</sup> DA PAM. 27-162, para. 11-10f. See Personnel Claims Note, *Initials No Longer Permitted on Chronology Sheet*, ARMY LAW., Aug 1998, at 56.

<sup>120</sup> DA PAM. 27-162, *supra* note 1, tbl. 11-1.

<sup>121</sup> AR 27-20, *supra* note 1, para. 11-14b.

<sup>122</sup> *Id.*; see Personnel Claims Note, *Policy Changes to be Published in New Regulation*, ARMY LAW., Feb. 1998, at 54, 56; Personnel Claims Note, *Staff Judge Advocates Must Personally Approve and Disapprove Waivers of Maximums*, ARMY LAW., Oct. 1998, at 68.

<sup>123</sup> AR 27-20, *supra* note 1, para. 11-21a(2). When adjudicating a claim that involves an insurance payment, the calculations can become very complex since the insurance payment must be compared to the claim payment on a line-by-line basis. See Personnel Claims Note, *Posting Payments to Claims Involving Insurance Payments*, ARMY LAW., June 1999, at 51.

<sup>124</sup> AR 27-20, *supra* note 1, para. 11-21a(2); see *Posting Payments to Claims Involving Insurance Payments*, *supra* note 123 at 51.

<sup>125</sup> Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Policy on Private Insurance, <https://www.jagcnet.army.mil/FORUMS> (May 14, 2003).

<sup>126</sup> DA PAM. 27-162, *supra* note 1, para. 11-6(f).

<sup>127</sup> AR 27-20, *supra* note 1, para. 11-6f; DA PAM. 27-162, *supra* note 1, para. 11-6f; see also Personnel Claims Note, *New Rules on Denial of Claims for Fraud*, ARMY LAW., July 1998, at 90.

<sup>128</sup> DA PAM. 27-162, *supra* note 1, para. 11-10a(3)(a).

<sup>129</sup> Personnel Claims Note, *Unclear Correspondence*, ARMY LAW., Mar. 1997, at 36.

<sup>130</sup> DA PAM. 27-162, *supra* note 1, figs. 11-2A, 11-2B.

<sup>131</sup> AR 27-120, *supra* note 1, para. 11-2f.

<sup>132</sup> *Id.* para. 11-20. This sixty-day time limit can be waived by the head of an area claims office (usually a staff judge advocate) in exceptional cases. *Id.*

<sup>133</sup> *Id.* para. 11-20a.

personnel must reconsider a claim if the claimant submits a written request.<sup>134</sup> The claims attorney must forward denials of such requests to the staff judge advocate. Staff judge advocates make the final decision on most requests for reconsideration when the amount in dispute is \$1,000 or less, when there are no new facts supporting the request, or when the request was submitted after the sixty day time limit.<sup>135</sup> Requests that the staff judge advocate cannot resolve should be forwarded to the USACS or the appropriate command claims service overseas, along with a memorandum of opinion containing a summary of the facts and an appropriate recommendation.<sup>136</sup>

### *Carrier Recovery*

Carrier recovery is an important part of the claims process. Once a claimant has been paid for loss or damage during a personal property shipment, the Army attempts to recover the amount of the loss from the responsible carrier.<sup>137</sup> This carrier recovery program generates millions of dollars in revenue every year; most of these funds are placed directly back into the claims budget to pay claims. Staff judge advocates should ensure their office is diligently assisting in this effort.

Claims personnel must document the reasons for the amount paid to the claimant to ensure that the Army's recovery efforts are successful. The substantiation needed for a successful recovery is the same as that needed to pay the claimant—the Army will need to establish that the item was given (tendered) to the carrier for shipment, that the item was lost or damaged during shipment, and that the loss or damage was of the amount alleged.<sup>138</sup> The Army can establish tender of the item for shipment by showing that the item is listed on the inventory.<sup>139</sup> Loss or damage during shipment can usually be established through the DD Form 1840, where the claimant notes loss or damage at delivery, or the DD Form 1840R, where the claimant notes loss or damage within seventy days after delivery.<sup>140</sup> The value of the loss is established by estimates of repair for damaged items and replacement costs for lost or destroyed items.<sup>141</sup> In some cases, such as when the claim includes items that are not specifically listed on the inventory<sup>142</sup> or when electronic items sustain only internal damage,<sup>143</sup> the claimant must submit special statements. Claims personnel should obtain all of this documentation during adjudication of the claim. The recovery process involves organizing this documentation and preparing a demand packet, which is forwarded to the appropriate carrier.<sup>144</sup>

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<sup>134</sup> *Id.* para. 11-20b.

<sup>135</sup> *Id.* para. 11-20d; *Policy Changes to be Published in New Regulation*, *supra* note 122, at 54, 55; Personnel Claims Note, *Staff Judge Advocate (SJA) Denial of Requests for Reconsideration*, ARMY LAW., Feb. 1999, at 50.

<sup>136</sup> AR 27-20, *supra* note 1, para. 11-20e; Personnel Claims Note, *Requests for Reconsideration*, ARMY LAW., Aug. 1997, at 46. Field claims personnel should also ensure that all of the required forms are in the file when it is forwarded to the USACS. *See generally* Personnel Claims Note, *Inclusion of Proper Forms in Claims Files*, ARMY LAW., Oct. 1998, at 68.

<sup>137</sup> AR 27-20, *supra* note 1, para. 11-24.

<sup>138</sup> DA PAM. 27-162, *supra* note 1, para. 11-23c.

<sup>139</sup> Tender generally requires that an item be identified by number as it appears on the inventory. In the case of an item missing from a packed carton, a reasonable and logical relationship between the stated contents of the carton and the missing item must be shown. A personal account of the packing procedure in the claimant's own words may be required if there is a question on tender. *See* DA PAM. 27-162, *supra* note 1, para. 11-23c(1); *see also id.* para. 11-25d; Personnel Claims Note, *Missing High Value Items*, ARMY LAW., Feb. 1997, at 51-52; Personnel Claims Note, *An Inventory Containing Fifty-Seven Garage Items*, ARMY LAW., Dec. 1997, at 48-49; Personnel Claims Note, *Listing Titles of Missing Video Cassette Tapes*, ARMY LAW., Sept. 1998, at 57. *See generally* Lieutenant Colonel Philip L. Kennerly, *Enhancing Recovery - A Claims Primer*, ARMY LAW., June 1997, at 3.

<sup>140</sup> *See* DA PAM. 27-162, *supra* note 1, para. 11-21g, h; Personnel Claims Note, *Checking Items Off the Inventory*, ARMY LAW., Dec. 1996, at 39. The damage alleged on the 1840 or 1840R need not be the same as alleged in the claim, as long as some damage is noted. *See* Personnel Claims Note, *Recovery for Items Not Listed on the DD Form 1840/1840R*, ARMY LAW., Mar. 1998, at 45. The DD Form 1840R must be sent to the carrier within seventy-five days; the dispatch date stamped on the form determines when it is dispatched. *See* Personnel Claims Note, *Dispatch Date Determines Timeliness of Notice of Loss and Damage*, ARMY LAW., Oct. 1997, at 53. Other documents can substitute for the DD Form 1840R, such as a government inspection report or letter from the claimant that has been sent to the carrier. *See* Personnel Claims Note, *What Constitutes Timely Notice?*, ARMY LAW., June 1997, at 59.

<sup>141</sup> DA PAM. 27-162, *supra* note 1, para. 11-23c(3); *see also* Personnel Claims Note, *Pursuing Carrier Recovery for the Cost of Reupholstering a Matched Set of Furniture When Items Within the Set Are Damaged*, ARMY LAW., June 1996, at 77-78.

<sup>142</sup> DA PAM. 27-162, *supra* note 1, para. 11-25d(2); Kennerly, *supra* note 139, at 6.

<sup>143</sup> DA PAM. 27-162, *supra* note 1, para. 11-25d(4); Kennerly, *supra* note 139, at 9.

<sup>144</sup> DA PAM. 27-162, *supra* note 1, para. 11-28a. *See* Personnel Claims Note, *Preparation of Recovery Documents*, ARMY LAW., Apr. 1997, at 164-65.

In preparing the demand packet, claims personnel must calculate the total amount to be recovered. This calculation may be somewhat complicated because depreciation rates applied to the carrier differ from the rates applied to the claimant.<sup>145</sup> Claims personnel must ensure that the recovery documents are properly completed and legible.<sup>146</sup>

Special rules apply to recovery actions relating to personally owned vehicles. The USACS or the appropriate command claims service will handle most of these recovery actions.<sup>147</sup>

Claims offices must sometimes take additional action related to carrier recovery. For example, the carrier has the right to inspect damaged household goods; claims personnel may need to assist in this effort.<sup>148</sup> The carrier also has the right to take possession of destroyed items when the claimant has been paid the depreciated replacement cost; claims personnel must sometimes assist in this process as well.<sup>149</sup> Carriers will occasionally submit estimates of repair to the claims office in an effort to limit their liability; claims personnel may be required to consider these estimates.<sup>150</sup> In addition, when items are lost or destroyed in shipment, the claims office must process an “unearned freight” letter to ensure the carrier does not receive payment for transporting that item.<sup>151</sup>

Some recovery actions are completed at the local office; others are completed centrally. Within the United States, most field offices are authorized to complete routine recovery actions under \$1,000. Recovery actions over this amount are sent the USACS for centralized recovery.<sup>152</sup> Claims entered into the old version of the personnel claims computer database should be held thirty days prior to forwarding for centralized recovery. Claims filed under the new personnel claims database should be sent immediately after the adjudication is complete and the recovery packet is prepared, unless there is a reasonable expectation that the claimant will file a request for reconsideration.<sup>153</sup>

### *Changes in Personal Property Shipment Process*

Staff judge advocates should keep track of major changes in personal property shipment procedures. These changes can have a huge impact on claims operations.

The military has undertaken a number of efforts to modernize or “reengineer” the process of packing and shipping household goods and hold baggage. An initial effort, developed by the Army, was fielded in 1997 and applied to shipments

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<sup>145</sup> See DA PAM. 27-162, *supra* note 1, tbls. 11-1, 11-4. These carrier depreciation tables have been supplemented by the Revised Joint Military/Industry Depreciation Guide, effective 1 April 2000. Posting of Nola J. Shollenberger to JAGCNet Claims Forum, subject: Addendum to Joint Military/Industry Depreciation Guide, <https://www.jagcnet.army.mil/FORUMS> (Apr. 11, 2000); see also Personnel Claims Note, *Depreciation on Compact Discs*, ARMY LAW., Sept. 1996, at 61. The calculation is further complicated by the fact that the maximum liability rate varies depending on the type of shipment. AR 27-20, *supra* note 1, para. 11-27. For most shipments the liability will be 1.25 times the net weight of the shipment, which means that the military can recover the full amount paid on most claims. See Personnel Claims Note, *Carrier Liability Rates*, ARMY LAW., June 1998, at 33-34.

<sup>146</sup> See Personnel Claims Note, *Importance of Purchase Amount on DD Form 1844*, ARMY LAW., July 1997, at 48-49; Personnel Claims Note, *Clarity of Documents*, ARMY LAW., Nov. 1997, at 57.

<sup>147</sup> See generally AR 27-20, *supra* note 1, para. 11-31a; DA PAM. 27-162, *supra* note 1, para. 11-31; Personnel Claims Note, *Recovery Under the Point to Point POV Pilot Program*, ARMY LAW., Feb. 1998, at 52-54.

<sup>148</sup> The carrier has the right to inspect damaged shipments within forty-five days of dispatch of the DD Form 1840R; the government is required to assist with these inspections. DA PAM. 27-162, *supra* note 1, para. 11-21f(6); Personnel Claims Note, *Carrier Inspection Rights*, ARMY LAW., Oct. 1996, at 47; Personnel Claims Note, *Don't Throw It Out*, ARMY LAW., Mar. 1997, at 35. See generally Kennerly, *supra* note 139, at 11.

<sup>149</sup> DA PAM. 27-162, *supra* note 1, para. 11-21f(8); Personnel Claims Note, *Turn-In of IRV Shipment Items with Salvage Value*, ARMY LAW. Sept. 1996, at 61; Personnel Claims Note, *The Military-Industry Memorandum of Understanding on Salvage*, ARMY LAW., Nov. 1998, at 68.

<sup>150</sup> Military claims offices must consider a carrier's estimate of repair if it is received within 45 days of delivery or before adjudication of the claim. In these situations, the claims office must use the carrier's estimate if it is the lowest estimate and the repair firm can perform the repairs for the price stated. See Personnel Claims Note, *When to Use (and How to Reject) a Carrier's Estimate*, ARMY LAW., Dec. 2002, at 27.

<sup>151</sup> AR 27-20, *supra* note 1, para. 11-24a(7); DA PAM. 27-162, *supra* note 1, para. 11-37.

<sup>152</sup> Increased released valuation shipments (which is the method of valuation for government shipments picked up on or after 1 October 1995) will be forwarded to the USACS for centralized recovery when the government bill of lading carrier's liability exceeds the field claims office's baseline authority. For most offices this is \$1,000, although some offices have been delegated higher authority by the Commander, USARCS. Recovery actions involving liability of more than one third party and claims involving payment by a private insurer, claims for mobile home shipments, claims involving bankrupt carriers and claims involving single incidents that result in damage to more than one shipment (such as a warehouse fire) should also be forwarded for centralized recovery. See DA PAM. 27-162, *supra* note 1, para. 11-32a; Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Delegation of Recovery Claim Authority, <https://www.jagcnet.army.mil/FORUMS> (June 22, 2001).

<sup>153</sup> See *supra* notes 17-18 and accompanying text.

originating from Hunter Army Airfield in Georgia.<sup>154</sup> A second effort, developed by the Military Traffic Management Command (MTMC), was initially fielded in January 1999 and applied to shipments originating from North Carolina, South Carolina, and Florida.<sup>155</sup> An expanded MTMC program was fielded in January 2001 and applied to shipments originating from Georgia and the National Capital Region.<sup>156</sup> All of these programs were discontinued because they were too expensive.<sup>157</sup>

The latest effort to reengineer personal property shipments is being developed by the Military Surface Deployment and Distribution Command (SDDC).<sup>158</sup> This program is called "Families First" and is scheduled to begin on 1 February 2006.<sup>159</sup> Under the Families First program, carriers will be selected on a "best value" approach focusing on performance, rather than lowest cost.<sup>160</sup> Customers will have the opportunity to complete a web-based customer satisfaction survey to measure the performance of the carrier handling their shipment.

The new program will encourage Soldiers and civilian employees to settle claims directly with the carrier responsible for the shipment. Claims will be filed directly with carriers using SDDC's web-based claim filing process. Carriers will either replace lost or damaged items with a comparable used item or provide claimants with the current replacement value without any deductions for depreciation.<sup>161</sup> The maximum liability for claims filed directly with the carrier will be \$50,000.<sup>162</sup>

If no settlement is reached within thirty days, a claimant may file a claim with the nearest military claims office.<sup>163</sup> Such claims are subject to the normal rules applicable to personnel claims, including deductions for depreciation. The latest information on the Families First program is located on the SDDC Internet site.<sup>164</sup>

### Tort Claims

Staff judge advocates should carefully review their office's tort claims operations. Although the number of tort claims received by most offices is normally less than the number of personnel claims received, tort claims often involve a great deal of work and large amounts of money. They may also involve intense interest by the media and the command.

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<sup>154</sup> This effort was developed by the Army Office of the Deputy Chief of Staff of Logistics. See Lieutenant Colonel R. Peter Masterton, *Reengineering Household Goods Shipments: Personnel Claims Implications*, ARMY LAW., Nov. 1997, at 15; Personnel Claims Note, *Reengineering Update*, ARMY LAW., Sept. 1999, at 39 [hereinafter *Reengineering Update*].

<sup>155</sup> *Id.*

<sup>156</sup> *Reengineering Update*, *supra* note 154, at 39; Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Full Service Move Project, <http://www.jagcnet.army.mil/FORUMS> (Oct. 4, 2000); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New Personal Property Shipping Program—FSMP, <https://www.jagcnet.army.mil/FORUMS> (Feb. 7, 2001); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: New HHG Shipping Program—FSMP, <https://www.jagcnet.army.mil/FORUMS> (Sept. 10, 2001); Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: More on Reengineering Program Claims, <https://www.jagcnet.army.mil/FORUMS> (Sept. 10, 2001).

<sup>157</sup> See Posting of Joseph Goetzke, to JAGCNet Claims Forum, subject: Early end of FSMP, <https://www.jagcnet.army.mil/FORUMS> (Oct. 2, 2001).

<sup>158</sup> The Military Traffic Management Command was renamed the Surface Deployment and Distribution Command on 1 January 2004. *Focused Support to the Warfighter Captured in Major Army Command Name Change*, TRANSLOG, Fall 2003, at 6, available at [http://www.sddc.army.mil/EXTRACONTENT/Translog/Fall\\_2003/Translog\\_Fall\\_2003.pdf](http://www.sddc.army.mil/EXTRACONTENT/Translog/Fall_2003/Translog_Fall_2003.pdf).

<sup>159</sup> Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: PC Claims—Delay in Family Friendly Program for Shipment of HHG, <https://www.jagcnet.army.mil/FORUMS> (June 29, 2005).

<sup>160</sup> LaWanda York, *Families First Will Transform Service Members' Moves*, USTRANSCOM News Serv., July 14, 2005, <http://www.transcom.mil/pa/body.Cfm?relnumber=050714-1>.

<sup>161</sup> The full replacement value will not apply to certain items such as boats, ultralight aircraft, pianos, musical organs, firearms, art objects, all-terrain vehicles, and snowmobiles. *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Surface Deployment and Distribution Command, About the Families First Program, <http://www.sddc.army.mil/frontDoor/0,1865,OID=4--7319---00.html>.

## Types of Claims

### Federal Tort Claims Act

Congress has enacted a number of statutes that permit persons to file claims against the United States based on tort theories of liability. The most commonly used statute in the United States is the Federal Tort Claims Act.<sup>165</sup> This statute makes the United States liable, to the same extent a private person would be, for death, personal injury or property damage caused by negligent or wrongful acts of the United States or its employees acting within the scope of employment.<sup>166</sup> There are many exceptions to liability under the Act. The Federal Tort Claims Act does not permit recovery for negligence that occurs in a foreign country and for certain willful torts.<sup>167</sup> Case law prohibits recovery under the Act for death, injury, or property loss by members of the Armed Forces arising incident to service,<sup>168</sup> or for death or personal injury of federal employees that are covered by workman's compensation statutes.<sup>169</sup> Claimants who are not satisfied with the settlement offered by the government may file suit against the United States within six months of final action on the claim.<sup>170</sup>

### Military Claims Act

Like the Federal Tort Claims Act, the Military Claims Act<sup>171</sup> permits recovery for death, personal injury, and property loss caused by the negligence of U.S. military personnel and civilian employees acting in the scope of employment.<sup>172</sup> The Military Claims Act, however, also permits recovery for injury and damage incident to the "noncombat activities" of the armed services.<sup>173</sup> Noncombat activities include practice firing of weapons and other uniquely military activities.<sup>174</sup> Because the Military Claims Act applies overseas, it is the primary means to recover for injury or death of family members of U.S. military personnel caused by the U.S. military overseas.<sup>175</sup> There is no right to file suit if a claimant is not satisfied with the settlement of a claim under the Military Claims Act, but a denial of a claim or a final settlement offer may be appealed to the next higher settlement authority.<sup>176</sup>

### National Guard Claims Act

The National Guard Claims Act<sup>177</sup> authorizes the settlement of claims for damages caused by National Guard Soldiers in certain limited circumstances. The Act only applies when National Guard personnel are under state control, but being paid with federal funds, such as when they are performing full-time National Guard duties or are on inactive duty training.<sup>178</sup> The Federal Tort Claims Act also applies to these situations and, in most cases, is used instead of the National Guard Claims

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<sup>165</sup> 28 U.S.C. §§ 2671-80 (2000).

<sup>166</sup> AR 27-20, *supra* note 1, para 4-2. *See also* Tort Claims Note, *In-Scope Privately Owned Vehicle (POV) Collisions*, ARMY LAW., Sept. 1999, at 39 (stating that the Federal Tort Claims Act is the exclusive remedy when a government driver causes damages in the scope of employment).

<sup>167</sup> *See* 28 U.S.C. § 2680; AR 27-20, *supra* note 1, para. 2-39d(8), (11).

<sup>168</sup> *See* AR 27-20, *supra* note 1, para. 2-39b. This exclusion is based on *Feres v. United States*, 340 U.S. 135 (1950). Property loss incurred incident to service may be payable under the Personnel Claims Act, 31 U.S.C. § 3721. If property loss is not payable under this statute, it may be payable under the Military Claims Act, 10 U.S.C. § 2733 or the National Guard Claims Act, 32 U.S.C. § 715.

<sup>169</sup> A federal employee's personal injury or wrongful death claim payable under the Federal Employees Compensation Act or the Longshore and Harbor Worker's Compensation Act is not payable under the Federal Tort Claims Act. AR 27-20, *supra* note 1, para. 2-39c.

<sup>170</sup> 28 U.S.C. § 2401(b).

<sup>171</sup> 10 U.S.C. § 2733.

<sup>172</sup> AR 27-20, *supra* note 1, para. 3-2a(1). Such claims in the United States may also implicate the Federal Tort Claims Act. If such a claim is denied it should be denied under both statutes. Tort Claims Note, *Denials Under Both the FTCA and MCA*, ARMY LAW., Mar. 2001, at 50.

<sup>173</sup> AR 27-20, *supra* note 1, para. 3-2a(2).

<sup>174</sup> *Id.* glossary, sec. II.

<sup>175</sup> *Id.* para. 3-2a. Such claims are generally not payable under the Federal Tort Claims Act, because it does not apply to negligence occurring in foreign countries. *Id.* para. 2-39d(11).

<sup>176</sup> 10 U.S.C. § 2735; AR 27-20, *supra* note 1, paras. 2-57c, 2-58; *see* Tort Claim Note, *Finality of Military Claims Act Decisions*, ARMY LAW., June 1999, at 49.

<sup>177</sup> 32 U.S.C. § 715.

<sup>178</sup> AR 27-20, *supra* note 1, para. 6-2a(2).

Act.<sup>179</sup> The National Guard Claims Act does not apply to National Guard Soldiers when they are under federal command and being paid with federal funds, such as when they are activated for federal duty; in this situation they are covered solely by the Federal Tort Claims Act or the other claims statutes applicable to active duty soldiers.<sup>180</sup> The National Guard Claims Act also does not apply when National Guard Soldiers are under state control and being paid with state funds, such as when they are on state active duty. In this situation, state claims statutes may apply.<sup>181</sup>

#### *Foreign Claims Act*

The Foreign Claims Act<sup>182</sup> permits the settlement of claims arising outside the United States and submitted by foreign governments and inhabitants of foreign countries.<sup>183</sup> The Foreign Claims Act is the authority for settlement of claims submitted by local nationals in Iraq,<sup>184</sup> Afghanistan, Kosovo, and Bosnia-Herzegovina.<sup>185</sup> The Foreign Claims Act permits recovery for “noncombat activities”<sup>186</sup> and negligent or wrongful acts by U.S. military personnel and employees.<sup>187</sup> There is no requirement that the negligent or wrongful acts occur within the scope of employment. Therefore, the Foreign Claims Act is frequently used by foreign inhabitants to recover for damage caused by off-duty military personnel in traffic accidents and similar incidents.

Claims under this statute are paid by “Foreign Claims Commissions.” These commissions are comprised of either one or three members<sup>188</sup> and typically include a commissioned officer or civilian claims attorney.<sup>189</sup> Claimants who are not satisfied with the settlement of their claims do not have the right to file suit under the Foreign Claims Act but may request reconsideration of the settlement.<sup>190</sup>

#### *Non-Scope Claims Act*

As its name implies, the Non-Scope Claims Act<sup>191</sup> permits claimants to recover for actions by government personnel not acting in the scope of employment. The Act permits payment of claims for personal injury, death, and property loss caused by military personnel and civilian employees incident to the use of a government vehicle or other U.S. property. This statute should only be used when there is no other basis for paying a claim, because the maximum amount payable is only \$1,000 for an out-of-pocket loss.<sup>192</sup> Dissatisfied claimants have no right to sue under the Non-Scope Claims Act.<sup>193</sup>

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<sup>179</sup> *Id.* para. 6-2c; see also Tort Claims Note, *Claims Arising from the Performance of Duties by Members of the National Guard*, ARMY LAW., Aug. 2001, at 24.

<sup>180</sup> AR 27-20, *supra* note 1, para. 6-2a(1).

<sup>181</sup> *Id.* para. 6-2a(3).

<sup>182</sup> 10 U.S.C. § 2734.

<sup>183</sup> AR 27-20, *supra* note 1, para. 10-2a.

<sup>184</sup> Captain Karin Tackaberry, *Center for Law & Military Operations (CLAMO) Note from the Field, Judge Advocates Play a Major Role in Rebuilding Iraq: The Foreign Claims Act and Implementation of the Commander's Emergency Response Program*, ARMY LAW., Feb. 2004, at 39.

<sup>185</sup> Major Jody M. Prescott, *Operational Claims in Bosnia-Herzegovina and Croatia*, ARMY LAW., June 1998, at 1.

<sup>186</sup> Noncombat activities include practice firing of weapons and other uniquely military activities. AR 27-20, *supra* note 1, glossary, sec. II.

<sup>187</sup> *Id.* para. 10-3a.

<sup>188</sup> *Id.* para. 10-7.

<sup>189</sup> *Id.* para. 10-8; see also Captain Christopher M. Ford, *The Practice of Law at the Brigade Combat Team (BCT): Boneyards, Hitting for the Cycle, and All Aspects of a Full Spectrum Practice*, ARMY LAW., Dec. 2004, at 22, 33.

<sup>190</sup> 10 U.S.C. § 2735 (2000); AR 27-20, *supra* note 1, para. 10-6f.

<sup>191</sup> 10 U.S.C. § 2737.

<sup>192</sup> AR 27-20, *supra* note 1, para. 5-2a.

<sup>193</sup> 10 U.S.C. § 2735.

## SOFA Claims

In countries where the United States has negotiated a Status of Forces Agreement (SOFA), this agreement forms the basis for settlement of claims by most local nationals.<sup>194</sup> The United States has concluded such agreements with all of the North Atlantic Treaty Organization and Partnership for Peace nations in Europe.<sup>195</sup> The United States has also concluded a SOFA agreement with Korea<sup>196</sup> and Japan.<sup>197</sup>

## Article 139 Claims

Article 139 of the Uniform Code of Military Justice<sup>198</sup> provides a special procedure to file claims directly against service members. The statute permits anyone to file a claim against a service member who has willfully damaged or wrongfully taken the claimant's property.<sup>199</sup>

Article 139 claims may be submitted orally or in writing within ninety days of the incident giving rise to the claim.<sup>200</sup> The claim is forwarded to the service member's court-martial convening authority, who appoints an investigating officer and, takes action on the claim following conclusion of the investigation.<sup>201</sup> Article 139 claims should not be delayed pending disciplinary action of the service member; the result of such action is irrelevant, since the standard of proof for the claim is different from the disciplinary standard of proof.<sup>202</sup>

## Receipt of Claims

Staff judge advocates should ensure that their claims office is properly documenting the receipt of tort claims. Most tort claims should be submitted on a Standard Form 95, Claim for Damage, Injury or Death.<sup>203</sup> However, any written notification of the incident giving rise to the claim containing a demand for a sum certain that is signed by the claimant or an authorized representative constitutes a valid claim.<sup>204</sup> Most claims statutes have a two-year statute of limitations.<sup>205</sup> A properly filed claim will stop the running of the applicable statute of limitations.<sup>206</sup>

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<sup>194</sup> AR 27-20, *supra* note 1, ch. 7.

<sup>195</sup> Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, June 19, 1951, U.S., 4 U.S.T. 1792, T.I.A.S. No. 2846, available at <http://www.nato.int/docu/basicxt/b510619a.htm>.

<sup>196</sup> Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea, July 9, 1966, U.S.-S. Korea, 17 U.S.T. 1677, T.I.A.S. No. 6127, available at <http://8tharmy.korea.army.mil/ClaimsSvc/>.

<sup>197</sup> Agreement Under Article VI of the Treaty of Mutual Cooperation and Security: Facilities and Areas and the Status of United States Armed Forces in Japan, Jan. 19, 1960, U.S.-Japan, 11 U.S.T. 1652, available at <http://8tharmy.korea.army.mil/ClaimsSvc/>. See generally Tort Claims Note, *Foreign Claims—Not Just for Overseas Offices*, ARMY LAW., Oct. 1998, at 69.

<sup>198</sup> UCMJ art. 139 (2002) (10 U.S.C. § 939).

<sup>199</sup> AR 27-20, *supra* note 1, para. 9-4. Damaging property while driving may give rise to an Article 139 claim if the servicemember shows reckless and wanton disregard for the property rights of others. *Id.* para. 9-4a; Claims Report, *Evidence of Driving Under the Influence (DUI) in an Article 139 Claim*, ARMY LAW., Feb. 1999, at 50. Theft of services, on the other hand, will not give rise to an Article 139 claim, because theft of services is not property damage. Personnel Claims Note, *Theft of Services Not Cognizable Under Article 139*, ARMY LAW., July 1997, at 48. The claimant can only recover direct damages related to the property damages, not consequential damages. Personnel Claims Note, *Direct v. Consequential Damages Under Article 139*, ARMY LAW., May 1997, at 79.

<sup>200</sup> AR 27-20, *supra* note 1, para. 9-7a. If the claim is submitted orally, it must be reduced to writing within ten days. These time limits may be waived for good cause. See *id.*

<sup>201</sup> The investigating officer is appointed by the special court-martial convening authority. *Id.* para. 9-7. The special court-martial convening authority may take final action on the claim if it can be approved for \$5,000 or less. The general court-martial convening authority can approve claims up to \$10,000. Claims over this amount are forwarded to the Commander of the USACS at Fort Meade. *Id.*

<sup>202</sup> See Personnel Claims Note, *The Effect of Disciplinary Action on Article 139 Claims*, ARMY LAW., Mar. 1998, at 44.

<sup>203</sup> AR 27-20, *supra* note 1, para. 2-7b; U.S. Dep't of Justice, SF 95, Claim for Damage, Injury, or Death (nd).

<sup>204</sup> AR 27-20, *supra* note 1, para. 2-7a; see also Tort Claim Note, *What Constitutes A Proper Tort Claim?* ARMY LAW. Mar. 1999, at 45.

<sup>205</sup> 28 U.S.C. § 2401b (2000); see Captain Julie Long, Litigation Division Note, *Sometimes It Pays to Be Ignorant*, ARMY LAW., June 2003, at 26.

<sup>206</sup> AR 27-20, *supra* note 1, para. 2-12a.

The claims office should date stamp all claims to indicate when they are received.<sup>207</sup> The claims office should contact the claimant by telephone, in writing, or in person, to acknowledge receipt of the claim.<sup>208</sup> Claims personnel should enter the claim into the Tort and Special Claims Database and assign the claim a number.<sup>209</sup> Each claims office has a geographic area of responsibility; if the claim arose in another office's area of responsibility, claims personnel should transfer the claim to the correct office.<sup>210</sup> If the claim is above the office's payment authority, claims personnel should prepare a mirror copy of the claim file and forward a copy to the USACS.<sup>211</sup>

### *Investigating Claims*

Staff judge advocates should ensure that tort claims are investigated promptly and thoroughly.<sup>212</sup> It is the claimant's responsibility to provide sufficient information to permit an investigation.<sup>213</sup> Once the claimant has submitted this information, claims personnel should gather all of the relevant documentary evidence and interview the relevant witnesses.

Military or local police will investigate traffic accidents. Claims investigators should coordinate with these agencies and obtain their reports prior to conducting an independent investigation.<sup>214</sup> In many cases it may be appropriate to hire an expert consultant or appraiser to assist with a claims investigation. If the claims office does not have sufficient funds to hire such experts, a request for funding can be forwarded to the USACS.<sup>215</sup>

Medical malpractice cases require special consideration. Claims personnel will need to interview the claimant and any health care providers who treated the claimant and to obtain copies of the claimant's medical records. In addition, claims personnel may need to interview other health care providers in the relevant practice area to determine whether there was a breach of the standard of care.<sup>216</sup> Contractor health care providers pose special problems. They may be government employees or independent contractors; the latter are not covered by the Federal Tort Claims Act unless strictly controlled by the government.<sup>217</sup>

Environmental claims also require special care. Such claims may be complicated by non-tort liability based on environmental regulations and statutes. Investigations of these claims should be coordinated with the installation environmental law specialist.<sup>218</sup>

### *Liability*

One of the primary goals of a tort claims investigation is to determine whether the claim is payable. This determination involves a careful application of the applicable law to the facts discovered during the investigation.

Most tort claim statutes depend on local law to determine liability. This generally means there must be a finding that the United States owed the claimant a duty of care, the United States breached that duty, and the breach was the proximate cause

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<sup>207</sup> DA PAM. 27-162, *supra* note 1, para. 2-8b(2).

<sup>208</sup> *Id.* para. 2-8b(1); AR 27-20, *supra* note 1, para. 2-8.

<sup>209</sup> AR 27-20, *supra* note 1, para. 2-12b.

<sup>210</sup> *Id.* para. 2-12c. A list of these areas of responsibility is contained in DA PAM. 27-162, *supra* note 1, tbl. 2-1. If the claim should have been filed with another federal agency, the claim will be forwarded to the proper agency and the claimant should be notified of this. AR 27-20, *supra* note 1, para. 2-16.

<sup>211</sup> AR 27-20, *supra* note 1, para. 2-15.

<sup>212</sup> *Id.* para. 2-33.

<sup>213</sup> *Id.* para. 2-35a.

<sup>214</sup> DA PAM. 27-162, *supra* note 1, para. 2-34e.

<sup>215</sup> AR 27-20, *supra* note 1, para. 2-36.

<sup>216</sup> Tort Claims Note, *Standard of Care in Medical Malpractice Cases*, ARMY LAW., Aug. 1996, at 34; Tort Claims Note, *Investigating a Suicide Case—Is the Health Care Facility Liable? A Practical Approach*, ARMY LAW., Nov. 1996, at 72.

<sup>217</sup> Tort Claims Note, *Are Contractor Health Care Providers "Employees of the Government"?*, ARMY LAW., Dec. 2000, at 25.

<sup>218</sup> Tort Claims Note, *Problems with Settling Environmental Claims*, ARMY LAW., Mar. 1997, at 36.

of the claimant's loss.<sup>219</sup> Federal law will be used to establish certain issues, such as who is a federal employee or member of the armed forces and whether the statute of limitations has run.<sup>220</sup>

Some statutes do not rely on local law to determine liability. For example, Military Claims Act claims based on wrongful or negligent acts are evaluated based on general principles of law applicable to private individuals in the majority of American jurisdictions.<sup>221</sup> Military Claims Act claims arising from noncombat activities do not rely on tort theories of liability and require only proof of causation.<sup>222</sup>

Under most tort claims statutes, claims are payable only if based on acts or omissions of members of the U.S. forces or civilian employees acting in the scope of employment.<sup>223</sup> Scope of employment, however, is not a requirement for claims under the Non-Scope Claims Act and the Foreign Tort Claims Act.<sup>224</sup>

In determining liability, the existence of certain threshold exclusions should be considered. The most common exclusion is the "incident to service" doctrine—claims by members of the armed forces injured incident to service are not payable.<sup>225</sup> Similarly, claims by federal employees injured in the course of employment are barred by workmen's compensation laws.<sup>226</sup> Other exclusions include claims for violations of the Federal Constitution,<sup>227</sup> claims based upon the exercise of a discretionary function,<sup>228</sup> claims for certain intentional torts such as assault and battery,<sup>229</sup> and claims arising out of combat activities.<sup>230</sup>

### Damages

If a claim is payable, determining the appropriate measure of damages is critical. In many cases determination of damages is the most important part of the investigation.

The applicable law for measuring damages will depend on the tort claim statute involved. Under the Federal Tort Claims Act, the law of the place where the incident giving rise to the claim occurred will apply.<sup>231</sup> The law of the place where the injury or death occurred may not be relevant.<sup>232</sup> Under the Military Claims Act, specific rules and limitations on the assessment of damages are spelled out in the Army claims regulation.<sup>233</sup> Under the Foreign Claims Act, damages will be

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<sup>219</sup> AR 27-20, *supra* note 1, para. 2-38a.

<sup>220</sup> *Id.* para. 2-38d, e.

<sup>221</sup> *Id.* para. 3-5a(1). Contributory negligence, however, is determined based on local law. *Id.*

<sup>222</sup> *Id.* para. 3-5a(2).

<sup>223</sup> *Id.* para. 2-40c.

<sup>224</sup> *Id.* paras. 5-3, 10-3a.

<sup>225</sup> See *Feres v. United States*, 340 U.S. 135 (1950); AR 27-20, *supra* note 1, para. 2-39b.

<sup>226</sup> AR 27-20, *supra* note 1, para. 2-39c. Personal injury and wrongful death actions of federal employees are covered by the Federal Employees Compensation Act, 5 U.S.C. § 8116 (2000) and the Longshore and Harbor Workers Compensation Act, 33 U.S.C. § 901- 950 (2000). The Federal Employees Compensation Act can cover people not traditionally thought of as federal employees, such as ROTC cadets. See Tort Claims Note, *Reserve Officer Training Corps (ROTC) Cadet Training Injuries*, ARMY LAW., Mar. 1999, at 47.

<sup>227</sup> AR 27-20, *supra* note 1, para. 2-39a.

<sup>228</sup> *Id.* para. 2-39d(2); 28 U.S.C. § 2680(c); see Lieutenant Commander Clyde A. Haig, *Discretionary Activities of Federal Agents Vis-a-Vis the Federal Tort Claims Act and the Military Claims Act: Are Discretionary Activities Protected at the Administrative Adjudication Level, and to What Extent Should They Be Protected?*, 183 MIL. L. REV. 110 (2005); Tort Claims Note, *Overflight Claims*, ARMY LAW., Aug. 1996, at 32; Captain Kurt G. Larkin, *The "Discretionary Function" and Assault and Battery" Exceptions to the Federal Tort Claims Act (FTCA): When They Apply and How They Work Together*, ARMY LAW., Dec. 2002, at 13; Major Steven L. Schooner, *The FTCA Discretionary Function Exception Nullifies \$25 Million Malpractice Judgment Against the DCAA: A Sigh of Relief Concludes the DIVAD Contract Saga*, ARMY LAW., Mar. 1999, at 17. See generally Tort Claims Note, *Most Common Exceptions to the FTCA*, ARMY LAW., July 1996, at 37 [hereinafter *Most Common Exceptions to the FTCA*].

<sup>229</sup> AR 27-20, *supra* note 1, para. 2-39d(8); 28 U.S.C. § 2680(h); see *Most Common Exceptions to the FTCA*, *supra* note 228, at 37; Larkin, *supra* note 228, at 15.

<sup>230</sup> AR 27-20, *supra* note 1, para. 2-39d(10); 28 U.S.C. § 2680(j).

<sup>231</sup> AR 27-20, *supra* note 1, para. 2-41a.

<sup>232</sup> *Id.*; see also Tort Claims Note, *Damages in Wrongful Death Claims*, ARMY LAW., June 1996, at 76.

<sup>233</sup> AR 27-20, *supra* note 1, para. 3-5a(3).

measured under local law, subject to the limitations of the Army claims regulation.<sup>234</sup> In most foreign countries, the amount of damages will be significantly less than in the United States.

### *Settlement*

Staff judge advocates should ensure that their claims personnel are settling meritorious tort claims promptly and fairly.<sup>235</sup> Claims personnel should be fair in negotiating with claimants and attempt to settle claims reasonably quickly. Only an attorney should negotiate a claim when the claimant is represented by an attorney. When a claimant is not represented, a nonattorney claims professional may conduct the negotiations.<sup>236</sup>

In some cases a structured settlement may be appropriate. Such a settlement involves periodic future payments and may involve setting up a trust for the claimant. Claims professionals should consider a structured settlement when the claimant is a minor or incompetent, when funds will be needed for future medical care, or when an injured party's life expectancy cannot be reasonably determined.<sup>237</sup>

A claimant's acceptance of an award constitutes full and final settlement of the claim.<sup>238</sup> A settlement agreement is required before the settlement of all tort claims, whether the claim is paid in full or in part.<sup>239</sup>

Tort claims payments come from several sources. For most tort claims, payments of \$2,500 or less come out of a central Army fund managed by the USACS at Fort Meade, Maryland.<sup>240</sup> Claim payments over this amount generally come out of the United States Judgment Fund.<sup>241</sup> Claims involving negligence of the Army and Air Force Exchange Service and other Nonappropriated Fund Instrumentalities will be paid out of Nonappropriated Funds.<sup>242</sup>

### **Affirmative Claims**

When Army property is damaged due to the negligence of others, Army claims offices pursue recovery against the responsible parties. These recoveries fall into two major types: (1) recovery for the cost of property damage caused by the negligence of others and (2) recovery for the cost of medical care and lost wages provided to Soldiers injured through the negligence of others. These recovery actions generate millions of dollars in revenue each year, much of which is returned to military medical treatment facilities and local installations.<sup>243</sup> Staff judge advocates should monitor recoveries to ensure they are aggressively pursued. Staff judge advocates should also highlight this good news to the command by including affirmative claims statistics in legal office briefings.

### *Property Claims*

When Army property is damaged through the negligence of others, the Army is authorized to pursue recovery under the Federal Claims Collection Act.<sup>244</sup> If Soldiers or Army employees cause the damages, the report of survey system, rather than the affirmative claims procedure, should be used to collect for the damage.<sup>245</sup>

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<sup>234</sup> *Id.* para. 2-41c.

<sup>235</sup> *Id.* para. 2-47.

<sup>236</sup> *Id.* para. 2-48.

<sup>237</sup> *Id.* para 2-46a; DA PAM. 27-162, *supra* note 1, para. 2-83; see Tort Claims Note, *Use of Annuities for Claims Arising in Foreign Countries*, ARMY LAW., Mar. 2001, at 49.

<sup>238</sup> AR 27-20, *supra* note 1, para. 2-56a(1).

<sup>239</sup> *Id.*; DA PAM 27-162, *supra* note 1, para. 2-93a.

<sup>240</sup> AR 27-20, *supra* note 1, para. 2-63b; DA PAM 27-162, *supra* note 1, para. 2-100b.

<sup>241</sup> *Id.*

<sup>242</sup> AR 27-20, *supra* note 1, para. 2-63e; DA PAM 27-162, *supra* note 1, para. 2-100h.

<sup>243</sup> See, e.g., Affirmative Claims Note, *1995 Affirmative Claims Report*, ARMY LAW., Aug. 1996, at 37.

<sup>244</sup> 31 U.S.C. § 3711 (2000); see AR 27-20, *supra* note 1, para. 14-1.

<sup>245</sup> See AR 27-20, *supra* note 1, para. 14-6b; see U.S. DEP'T OF ARMY, REG. 735-5, POLICIES AND PROCEDURES FOR PROPERTY ACCOUNTABILITY (28 Feb. 2005).

Funds recovered on affirmative property damage claims are deposited in several places, depending on the type of property involved. Funds recovered for damage to real property are deposited in the installation account available for the repair of the property.<sup>246</sup> Funds recovered for damage to other property are generally deposited into a special centralized account.<sup>247</sup> Funds recovered for damage to Nonappropriated Fund Instrumentality property are returned to the organization involved.<sup>248</sup> The Army may also accept repair or replacement of property in lieu of payment of a claim.<sup>249</sup>

### *Medical Care and Lost Wages Claims*

Several statutes give the Army the authority to recover for medical care and lost wages for Soldiers injured due to the negligence of others. The Federal Medical Care Recovery Act<sup>250</sup> permits the Army to recover for medical care furnished by the United States under circumstances creating tort liability of a third person. The Federal Medical Care Recovery Act also permits the Army to recover for lost pay provided to a Soldier injured by the tortious act of another.<sup>251</sup> Section 1095 of Title 10 of the United States Code<sup>252</sup> permits medical treatment facilities to recover for health care services from health insurance companies. This broad statutory authority provides Army claims offices with another avenue to recover against insurance companies for medical treatment provided as a result of the negligent or wrongful act of another.<sup>253</sup> The statute also provides authority to recover against the injured party's own insurance company; however, claims offices usually do not become involved in these recoveries.

Funds recovered for medical care should be deposited into the Operations and Maintenance Account of the Medical Treatment Facility that provided the care.<sup>254</sup> Funds recovered for lost wages should be deposited into the Operations and Maintenance Account of the unit to which the Soldier was assigned at the time of the injury.<sup>255</sup>

### *Processing Affirmative Claims*

A field claims office may accept full payment on an affirmative claim in any amount.<sup>256</sup> However, the authority to terminate, waive, or compromise such claims is more limited. Most large claims offices have the authority to settle such claims up to \$50,000; above this amount the claims must be sent to the USACS at Fort Meade.<sup>257</sup> When forwarding a claim, the field office should prepare a memorandum that includes an assessment of the case, a recommended disposition, and, when the claim involves medical care, a medical care worksheet.<sup>258</sup> Staff judge advocates should review these memorandums to ensure they are properly prepared.

Staff judge advocates should periodically inspect affirmative claims operations to ensure these claims are being properly pursued and that funds are being deposited correctly. Staff judge advocates should review the procedures used to discover affirmative claims to ensure that claims personnel are not missing potential sources of recovery. Military police blotters and

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<sup>246</sup> AR 27-20, *supra* note 1, para. 14-19c(1); *see also* Affirmative Claims Note, *Change in Deposit Procedures for Recoveries for Damaged Real Property Under 10 U.S.C. § 2782*, ARMY LAW., Oct. 1996, at 47.

<sup>247</sup> AR 27-20, *supra* note 1, para. 14-19c(2).

<sup>248</sup> *Id.* para. 14-19c(3).

<sup>249</sup> *Id.* para. 14-8.

<sup>250</sup> 42 U.S.C. § 2651-53 (2000).

<sup>251</sup> *See* AR 27-20, *supra* note 1, para. 14-1a(2); *see also* Affirmative Claims Note, *Lost Wages Under the Federal Medical Care Recovery Act*, ARMY LAW., Dec. 1996, at 38.

<sup>252</sup> 10 U.S.C. § 1095.

<sup>253</sup> AR 27-20, *supra* note 1, para. 14-1a(3); *see also* Affirmative Claims Note, *Medical Payments Coverage and 10 U.S.C. § 1095*, ARMY LAW., Dec. 1996, at 37.

<sup>254</sup> AR 27-20, *supra* note 1, para. 14-19e.

<sup>255</sup> *Id.* para. 14-19d.

<sup>256</sup> AR 27-20, *supra* note 1, para. 14-4.

<sup>257</sup> The head of an area claims office generally has the authority to (1) compromise up to \$50,000 of a claim asserted for 50,000 or less; (2) terminate collection action on claims asserted for \$50,000 or less when further collection efforts are not feasible; and (3) waive medical care claims asserted for \$50,000 or less when collection will result in undue hardship to the injured party. *Id.* para. 14-4c.

<sup>258</sup> *Id.* para. 14-16d; DA PAM. 27-162, *supra* note 1, para. 14-16c, figs. 14-3, 14-4; *see also* Affirmative Claims Note, *Medical Care Recovery Worksheets*, ARMY LAW., Sept. 1997, at 60.

military treatment facility records are common sources of affirmative claim information, which should be reviewed by claims personnel.<sup>259</sup> Staff judge advocates should also ensure that office deposit records are reconciled with those of the servicing finance office to verify that funds are being credited to the proper accounts.<sup>260</sup>

### Deployment Claims

Claims aspects of deployments are becoming increasingly important.<sup>261</sup> Staff judge advocates should ensure their deployed judge advocates are familiar with claims procedures and have the appropriate appointment orders to pay claims.

#### *Foreign Claims Act*

Many deployed judge advocates are appointed as Foreign Claims Commissions with the authority to make payments under the Foreign Claims Act.<sup>262</sup> Claims are payable under the Foreign Claims Act when loss or injury is caused by the negligence or wrongful acts of U.S. military personnel or when it results from the noncombat activities the U.S. military.<sup>263</sup> Loss or injury caused by combat is not payable under the Foreign Claims Act.<sup>264</sup> Defining what constitutes “combat” and what constitutes “noncombat” activities or negligent acts can be difficult. For example, when a U.S. truck crashes into a local national’s vehicle, this accident may be considered a payable negligent act or a nonpayable combat activity depending on the circumstances. In making this decision, claims personnel should look at the mission involved, the threat situation, and the circumstances of the accident.<sup>265</sup>

#### *Real Estate Claims*

Real estate claims are also an issue often dealt with by claims personnel. These are not claims in the traditional sense, but are rather requests for reimbursement for the use (or lease) of land. Although claims personnel may review these actions, they are adjudicated by the Corps of Engineers.<sup>266</sup>

#### *Solatia*

Solatia are payments made in accordance with local custom to express remorse or sympathy.<sup>267</sup> These are not claims payments and can be made without regard to fault or liability.<sup>268</sup> Solatia procedures permit commanders to make payments from appropriated funds to express sympathy for a death, injury, or property loss in which U.S. forces were involved. Solatia payments are not an admission of liability. The U.S. military in Korea has adopted a solatia regulation that permits payment of approximately \$5,000 for cases involving death or critical injury, approximately \$1,000 for serious injury, and approximately \$500 for other injuries or property damage.<sup>269</sup> Solatia payments are also authorized in Iraq, where

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<sup>259</sup> AR 27-20, *supra* note 1, para. 14-12c.

<sup>260</sup> *Id.* para. 14-19f.

<sup>261</sup> Tackaberry, *supra* note 184, at 39.

<sup>262</sup> Ford, *supra* note 189, at 33.

<sup>263</sup> AR 27-20, *supra* note 1, para. 10-3a.

<sup>264</sup> *Id.* para. 2-39d(10); Ford, *supra* note 189, at 35.

<sup>265</sup> In Iraq it is assumed that loss or injury relates to combat when coalition forces fire weapons. Tackaberry, *supra* note 184, at 40.

<sup>266</sup> U.S. DEP’T OF ARMY, FIELD MANUAL 100-10-2, CONTRACTING SUPPORT ON THE BATTLEFIELD para. 2-7 (15 Apr. 1999); *see* Ford, *supra* note 189, at 35.

<sup>267</sup> AR 27-20, *supra* note 1, para. 10-10.

<sup>268</sup> *Id.*

<sup>269</sup> U.S. FORCES KOREA, REG. 526-11, UNITED STATES FORCES KOREA, RELATIONS WITH KOREAN NATIONALS, CONDOLENCE VISITS AND SOLATIUM PAYMENTS (19 May 2004), *available at* <http://8tharmy.korea.army.mil/claimssvc/>. The regulation permits the payment of Won 5,000,000 (\$4,932.85) for cases involving death or critical injury, Won 1,000,000 (\$986.57) for serious injury, and Won 500,000 (\$493.29) for other injuries or property damage. *See id.* The conversions were based on the exchange rate for 24 March 2005 and were obtained from the Universal Currency Converter, <http://www.xe.com/ucc/convert.cgi>.

commanders are authorized to pay up to \$2,500 for cases involving death, \$1,000 for serious injury, and \$500 for property damage.<sup>270</sup>

### *Commander's Emergency Response Program*

Another alternative to making payments under the Foreign Claims Act is the Commander's Emergency Response Program. This program originated in Iraq where seized assets were used to provide funds to respond to the emergency needs of the Iraqi people. Congress subsequently authorized the use of appropriated funds for this initiative in both Iraq and Afghanistan. The program gives commanders in these countries the financial means to take immediate action to assist with recovery and rebuilding efforts.<sup>271</sup>

### *Personnel Claims*

Most deployment-related personnel claims issues arise before and after the deployment, rather than during the deployment. Staff judge advocates should ensure their claims personnel are involved in planning for every deployment.

Most Soldiers are entitled to store personally owned vehicles during deployments.<sup>272</sup> The best way to store vehicles during a deployment is to contract for commercial storage. If commercial storage is not possible, the vehicles may be stored in a secured lot on the installation. In this case, commanders should ensure that joint inventories are prepared, which include a list of preexisting damage to the vehicle. In either case, the vehicles are covered by a \$20,000 maximum amount allowable. If Soldiers chose to park their vehicles at their assigned quarters during the deployment, they are only covered by a \$3,000 maximum.<sup>273</sup> Soldiers are not required to maintain private insurance on the vehicle during storage if an installation commander or provost marshal has authorized them to cancel their insurance.<sup>274</sup> Soldiers may want to leave their insurance in effect, however, as it provides additional protection above the military claims system. Soldiers who do so are not required to file with their private insurance before filing a damage claim with the government.<sup>275</sup>

Commanders often decide to pack and store personal property of deploying Soldiers who live in the barracks. Moving deploying Soldiers out of the barracks permits commanders to use the barracks for other Soldiers who backfill the unit. If commanders decide to do this, the best option is to obtain the funds for commercial storage. If commercial storage is not possible, the property may have to be packed by other Soldiers and stored at a government facility. Commanders should make every effort to use the same procedures used by commercial firms—the Soldiers packing the goods should be provided with packing material and should complete a detailed inventory of the property being stored.<sup>276</sup> The storage facility should be properly secured. If commanders decide to “preposition” personal property so it will be immediately available when Soldiers return from deployment, the property should be properly secured. The convenience of having immediate access to personal property will be worthless if returning Soldiers find that their property has been stolen or lost.

Since Soldiers generally do not have the authorization to ship personal property during a deployment, property losses in deployed locations should be minimal. Many Soldiers, however, purchase property during a deployment, which may become lost or damaged. Such losses are generally compensable, as long as it is reasonable to have the property in the deployed

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<sup>270</sup> Memorandum, Department of Defense Office of General Counsel, to Staff Judge Advocates, U.S. Central Command, subject: Solatia (24 Nov. 2004); Ford, *supra* note 189, at 36.

<sup>271</sup> Lieutenant Colonel Mark Martins, *No Small Change of Soldiering: The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan*, ARMY LAW., Feb. 2004, at 1; Tackaberry, *supra* note 184, at 39;

<sup>272</sup> Personnel Claims Note, *Claims Implications of the New POV Storage Entitlement*, ARMY LAW., Dec. 1997, at 47.

<sup>273</sup> The maximum allowable amount for vehicle loss or damage during shipment \$20,000; \$3,000 is the maximum allowable amount for loss or damage to vehicles located on the installation or at quarters. DA PAM. 27-162, *supra* note 1, tbl. 11-1; *see also* Memorandum, Joseph Goetzke, Deputy Chief, Personnel Claims and Recovery Division, subject: POV Storage During Deployments-Claims, *in* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Additional Guidance on POV Deployment Storage Claims, <https://www.jagcnet.army.mil/FORUMS> (Feb. 13, 2003).

<sup>274</sup> *Id.*

<sup>275</sup> Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Private Insurance on Claims for POVs Stored on Post, <https://www.jagcnet.army.mil/FORUMS> (Oct 29, 2003),

<sup>276</sup> Memorandum, Joseph Goetzke, Deputy Chief, Personnel Claims and Recovery Division, subject: Operational Deployments – Protecting Soldiers—Inventories and Securing Property, *in* Posting of Joseph Goetzke to JAGCNet Claims Forum, subject: Deployment—Storage and Inventories of Soldiers Property, <https://www.jagcnet.army.mil/FORUMS> (Sept. 3, 2004).

location and it was properly secured.<sup>277</sup> Claims personnel should not hold Soldiers to the same standards of securing their property in deployed locations as they are held to at home station.<sup>278</sup>

### Conclusion

All staff judge advocates should monitor their claims offices by reviewing claims reports, office SOPs, and customer satisfaction surveys. When staff judge advocates review claims, they should do more than simply check for typographical errors; they should ask claims personnel to explain the adjudication.

Staff judge advocates should encourage claims personnel to apply for the Judge Advocate General's Excellence in Claims Award every February. The application process will give both the office leadership and the claims personnel an opportunity to see how well the office is doing. Periodically inspect the claims office operations to ensure that backlogs are not developing, files are properly maintained, funds are properly tracked, and incoming checks are properly secured. Finally, staff judge advocates must ensure that claims personnel have the necessary resources and are getting the necessary training.

A properly run claims office can significantly improve morale in the local military community and boost the reputation of the legal office. Staff judge advocates should provide the support and supervision necessary to ensure this happens.

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<sup>277</sup> If Soldiers can purchase an item in theatre or have it shipped through the Internet, it is generally considered reasonable and useful to possess. *Id.*

<sup>278</sup> *Id.*